

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

In re

Steven James Weller,

Case No. **22-00173-als7**

Debtor(s)

Christina L. Kruse, et al.,

Adv. Pro. No. **22-30011-als**

Plaintiff(s)

v.

Steven James Weller,

Defendant(s)

MEMORANDUM OF DECISION

(date entered on docket: March 6, 2023)

Before the Court is the Plaintiff's Motion for Summary Judgment, the Defendant's Objection and Cross-Motion for Summary Judgment, Plaintiff's Reply, and Plaintiff's Objection and Motion to Strike or Deny. The Court has jurisdiction of these matters under 28 U.S.C. §§157(b)(1) and 1334. This matter was taken under advisement on the record before the Court after oral arguments were presented. For the reasons stated the objection is overruled and the Motion for Summary Judgment is granted.

BACKGROUND

This adversary proceeding concerns \$100,000 in attorney fees awarded in a state court action¹ against Defendant Steven Weller (Weller). On January 28, 2012, while driving in rural Iowa, Weller ran a stop sign and collided with the Plaintiff Christina Kruse (Kruse) causing her to

¹ Christina L. Kruse, individually and as mother and next friend of Harley J. Hudson; the Guardianship and Conservatorship of Christina Kruse, by and through Charles Kruse and Verda Kruse, as co-guardians and co-conservators of Christina Kruse, on behalf of Christina L. Kruse, individually and as mother and next friend of Harley J. Hudson; and the Guardianship and Conservatorship of Harley Hudson, by and through Charles Kruse and Verda Kruse, as co-guardians and co-conservators of Harley Hudson v. Steven James Weller, individually and in his capacity as trustee of the Steven J. Weller Revocable Trust; the Steven J. Weller Revocable Trust; Weller Farms, LLC, an Iowa Limited Liability Company; and Cody Allen Weller, an individual, Case No. EQEQ088047.

suffer serious injuries. In May 2015, a civil trial resulted in a judgment against Weller in excess of \$2.5 million.² In 2016, Kruse filed a petition in state court alleging that Weller intentionally and fraudulently transferred his personal assets to family members and a newly formed LLC to avoid payment of her judgment. In 2018 the Iowa District Court for Mahaska County (“state court”) entered an Order setting aside fraudulent transfers made by Weller and awarding attorney fees arising out of that action. After submission of a fee affidavit by Kruse’s attorney, Justin Swaim, the court entered judgment against Weller for attorney fees in the amount of \$100,000.

Weller filed a voluntary petition under chapter 7 on February 25, 2022. Kruse, Attorney Swaim and Swaim Law Firm P.L.L.C. (collectively “Plaintiff”) filed this adversary proceeding alleging that the attorney fees owed by Weller are non-dischargeable under 11 U.S.C. §§ 523(a)(2) and (a)(6). Plaintiff has moved for summary judgment on both counts. Weller objects.

Specifically, Plaintiff argues that because the attorney fees are related to the underlying fraudulent transfer judgment and therefore are non-dischargeable under 11 U.S.C. §523(a)(2)(A). Weller takes the position that his actions were taken on the advice of previous counsel, and upon learning the advice he was given was wrong he reversed the transfers to the extent he could.

DISCUSSION

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. Pro. 56(a). Summary judgment is designed “to secure the just, speedy and inexpensive determination” of matters before the courts. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). “Summary judgment is appropriate if, viewing the evidence in the light most favorable to the nonmoving party, there is no material factual dispute.” *Bremer Bank v. John Hancock Life Ins. Co.*, 601 F.3d 824, 829 (8th Cir. 2010); Fed. R. Civ. Pro. 56(c). The party opposing the motion must do more than raise doubts or bare assertions to meet its burden to establish a disputed fact. *Bedford v. Doe*, 880 F.3d 993, 997 (8th Cir. 2018). Substantive law guides the evaluation of whether genuine issues of material fact exist on an essential element of the case which will affect the outcome. *Ries v. Wintz. Props., Inc.*, 230 B.R. 848, 858 (B.A.P. 8th Cir. 1999) (citations omitted). In making this determination “the court is required to review the record and draw all reasonable inferences in favor of the non-movant.” *Page v. JP Morgan Chase Bank (In re Page)*,

² Dischargeability of this judgment is not at issue in this adversary proceeding.

592 B.R. 334, 337 (B.A.P. 8th Cir. 2018) (citing *Foster v. Johns-Manville Sales Corp.*, 787 F.2d 390, 391-92 (8th Cir. 1986)).

The following facts are undisputed: The state court’s Trial Order and Verdict concluded that Weller acted with fraudulent intent in making cash gifts, transferring his personal property to Weller Farms, LLC and funding transfers to 529 College Savings Accounts. The factual findings contained in the state court’s order leaves no doubt as to its conclusions about Weller’s conduct.

Here, the formation of the LLC was intended to keep certain assets from his creditors . . . The Operating Agreement lists as one purpose of the LLC as “[P]rovide protection to family assets from claims of future creditors against family members.” The future creditors are the Plaintiffs in this case. . . ³

Defendant Steven Weller’s behavior since the rendering of the verdict on May 1, 2015 is telling as to what his intent was when the LLC was formed. Defendant has paid very little of the judgment and practiced financial maneuvers which have kept his personal assets out of reach of Plaintiffs.

Bluntly, [Weller] has not acted like a person who has any intent on satisfying the judgment against him.⁴

In addition to avoiding specific transfers the state court ordered Weller to pay “Plaintiffs’ attorney fees in full.”⁵ In its Order dated May 18, 2018, the state court concluded that Iowa law permitted an award of attorney fees and further stated: “The Court finds that [Weller] was conniving in his action to prevent Plaintiff from gaining access to assets in Weller Farms L.L.C. Furthermore, the time to enlarge or appeal the Court’s verdict has passed. Plaintiff’s attorney is entitled to reasonable attorney fees.”⁶

1. 11 U.S.C. §523(a)(2)(A)

A bankruptcy discharge will not discharge an individual debtor “from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud.” 11 U.S.C. § 523(a)(2)(A); see also *Lund-Ross Constrs., Inc. v. Buchanan (In re Buchanan)*, 31 F.4th 1091, 1094 (8th Cir. 2022). “The term

³ ECF 12 APP011

⁴ ECF 12-2, APP012

⁵ ECF 12-2, APP001; APP016; APP018-019

⁶ ECF 12-2 APP0018

‘actual fraud’ includes fraudulent conveyances.” *Lariat Co. v. Wigley (In re Wigley)*, 15 F.4th 1208, 1211 (8th Cir. 2021) (citing to *Husky Int’l Elecs., Inc. v. Ritz (In re Husky)*, 578 U.S. 355 (2016)). A fraud is an actual fraud “if the debtor intended by the transfer to hinder his creditors.” *In re Wigley*, 15 F.4th at 1211 (quoting *McClellan v. Cantrell*, 217 F.3d 890, 894 (7th Cir. 2000)).

The Supreme Court has made clear that the exception to discharge under 11 U.S.C. § 523(a)(2) applies to an award of attorney’s fees so long as the award of the fees arose from a finding of fraud. *Cohen v. De La Cruz*, 523 U.S. 213, 223 (1998). Because the underlying litigation determined that Weller’s conduct was fraudulent the attorney fees awarded by the court are not dischargeable in bankruptcy. See *In re Hunter*, 771 F.2d 1126, 1130 (8th Cir. 1985) (holding the dischargeability of attorney fees is dependent upon the status of the primary underlying debt from which they arise). When a court has already “decided an issue of fact or law necessary to its judgment, the same issue cannot be relitigated in later proceedings.” *Winnebago Indus. v. Haverly*, 727 N.W.2d 567, 571-72 (Iowa 2006). Weller’s fraudulent conduct was established in the state court litigation and this conclusion is dispositive in the bankruptcy case under the principle of res judicata.

2. 11 U.S.C. §523(a)(6)

Plaintiff also seeks to except the award of attorney fees pursuant to 11 U.S.C. §523(a)(6). This section does not permit discharge of obligations arising from “willful and malicious injury,” whether or not that injury is the result of fraud. *In re Husky*, 578 U.S. at 363 citing *Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S. Ct. 974, 140 L. Ed. 2d 90 (1998). In the Eighth Circuit, the terms “willful” and “malicious” are two distinct elements, each of which must be shown to establish an exception to discharge. *Dering Pierson Grp., LLC v. Kantos (In re Kantos)*, 579 B.R. 846, 851 (B.A.P. 8th Cir. 2018) (citing *Fischer v. Scarborough (In re Scarborough)*, 171 F.3d 638, 641 (8th Cir. 1999)). The Supreme Court addressed the term “willful” for purposes of § 523(a)(6) and concluded that the word “willful” modifies the word “injury.” This indicates that the exception to discharge requires a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury. *Kawaauhau*, 523 U.S. at 61. The Supreme Court, however, did not address the meaning of malicious in *Geiger*. *Allstate Insurance v. Dziuk (In re Dziuk)*, 218 B.R. 485 (Bankr. D. Minn. 1998). In the Eighth Circuit, an injury is malicious when the debtor intended to harm the creditor at least in the sense that the debtor's tortious conduct was certain or almost certain to

cause harm. *Waugh v. Eldridge (In re Waugh)*, 95 F.3d 706, 711 (8th Cir. 1996); *Johnson v. Miera (In re Miera)*, 926 F.2d 741, 743 (8th Cir. 1991).

For purposes of dischargeability the bankruptcy code “[D]oes not distinguish between debts which are compensatory in nature and those which are punitive. The language of section 523(a)(6) is directed at the nature of the conduct which gives rise to the debt, rather than the nature of the debt.” *In re Miera*, 926 F.2d at 745. Thus, all damages stemming from a willful and malicious injury are nondischargeable under § 523(a)(6). *Id.*

The state court relied upon *Hockenberg Equip. Co. v. Hockenberg’s Equip. & Supply Co.*, 510 N.W. 2d 153 (Iowa 1993) to exercise its discretion in awarding attorney fees to the Plaintiff.

A party generally has no claim for attorney fees as damages in the absence of a statutory or written contractual provision allowing such an award. Courts have recognized a rare exception to this general rule, however, “when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.”

Id. at 158 (internal citations omitted). Upon a showing of “willful and wanton disregard for the rights of another” an award of attorney fees is appropriate. *Id.* at 160. Here the state court made this determination which precludes discharge of the attorney fees under the standard established at 11 U.S.C. §523(a)(6).

3. Weller’s Affidavit

The facts set forth in Weller’s affidavit are not relevant to the pending Motion and do not serve to create a genuine issue of material fact. He advances no argument nor supplies any admissible evidence to generate a genuine issue of material fact that changes the legal effect of the judgments entered in the state court action — or that would support a conclusion that he is entitled to summary judgment in his favor.

For the reasons stated above, **it is HEREBY ORDERED that:**

1. The Defendant’s Objection is overruled, and his Cross Motion for Summary Judgment is denied;
2. The Plaintiff’s Motion for Summary Judgment is granted pursuant to 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(6);
3. The attorney fees in the amount of \$100,000 plus interest are excepted from discharge in Weller’s bankruptcy case;

4. The Plaintiff's Motion to Strike or Deny is deemed moot; and
5. Judgment shall enter accordingly.

/s/ Anita L. Shodeen

Anita L. Shodeen
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:
Electronic Filers in this Adversary Proceeding