

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
JOHN R. CANTRELL, )  
Debtor. ) Bankruptcy Case No. 96-60021  
PROGRESSIVE INSURANCE CO., )  
and SHELTER INSURANCE CO., )  
Plaintiffs, )  
vs. ) Adversary Case No. 96-6005  
JOHN R. CANTRELL, )  
Defendant. )

OPINION

This matter having come before the Court for trial on a Complaint to Determine Dischargeability of Debt; the Court, having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The material facts in this matter are not in dispute and are, in pertinent part, as follows:

1. On July 9, 1994, while a passenger in a motor vehicle being driven and operated by the Defendant, John R. Cantrell, Wendell Ely was injured as a result of an automobile accident and suffered the loss of his right arm.
2. John R. Cantrell was charged with driving under the influence of alcohol in violation of Illinois Statutes, which is a Class A misdemeanor. On September 20, 1994, John R. Cantrell pled guilty to the charge of driving under the influence of alcohol in the State Court in Jasper County, Illinois, in Case No. 94-TR-612.
3. On October 20, 1994, a Judgment Order was entered by the Circuit Court for the

Fourth Judicial Circuit, Jasper County, Illinois, finding the Defendant guilty, placing him on Court supervision for a period of two years, fining him \$500, and limiting his driving privileges.

4. At the time of the accident on July 9, 1994, the Defendant had no automobile insurance. As a result, Wendell Ely sought reimbursement for his \$50,000 in medical bills and the loss of his arm from his underinsured and uninsured motorist carriers, which are the Plaintiffs herein, Progressive Insurance Co. and Shelter Insurance Co.

5. The Plaintiffs paid Wendell Ely a sum of \$100,000 in exchange for Mr. Ely's release. As a result of those payments, the Plaintiffs became subrogated to the claims of Wendell Ely against the Defendant, John R. Cantrell.

6. On January 22, 1996, John R. Cantrell filed for relief under Chapter 7 of the Bankruptcy Code scheduling, as unsecured creditors, both the Plaintiffs in this adversary proceeding and Wendell Ely, seeking to have their debts discharged pursuant to the provisions of 11 U.S.C. § 727.

7. On March 15, 1996, the instant adversary proceeding was filed seeking to have the debt to Progressive Insurance Co. and Shelter Insurance Co. declared non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(9).

#### Conclusions of Law

Pursuant to 11 U.S.C. § 523(a)(9):

(a) A discharge under § 727, . . . or 1328(b) of this title does not discharge an individual debtor from any debt -

(9) for death or personal injury caused by the debtor's operation of motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

In his argument, counsel for Defendant admits that, if Wendell Ely had brought the instant adversary action, there would be no question that the subject debt would be dischargeable pursuant to 11 U.S.C. §523(a)(9). However, Defendant asserts that the Plaintiffs herein, Progressive Insurance Co. and Shelter Insurance Co., as subrogees of Wendell Ely, should not be entitled to a finding of non-dischargeability given that they were not the actual parties to be injured as a result of the Defendant's illegal

operation of a motor vehicle. This issue has previously been addressed by the Court in an Opinion and Order entered on May 31, 1996, wherein the Court denied Defendant's Motion to Dismiss Plaintiffs' Complaint based upon the same argument as made at trial in this matter. The Court's Order, entered on May 31, 1996, is now a final Order, and the Court will not rehash the findings made in that Order. However, the Court will note that it found Progressive Insurance Co. and Shelter Insurance Co., as subrogees, have all the rights and remedies that would have been available to Wendell Ely had he brought the instant adversary action against the Defendant. As such, the Court finds that there is no question that the debt due to Progressive Insurance Co. and Shelter Insurance Co. is non-dischargeable pursuant to the provisions of 11 U.S.C. § 523(a)(9). The Court makes this finding based upon the Defendant's plea of guilty in the State Court action charging him with driving under the influence of alcohol and upon the Judgment entered against the Defendant in the Circuit Court for the Second Judicial Circuit, Richland County, Illinois, Case No. 95-L-15, in favor of the Plaintiffs, on January 11, 1996.

ENTERED: November 12, 1996.

/s/ GERALD D. FINES  
United States Bankruptcy Judge