

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

CAROL PRATT and KENNETH)	
PRATT, Individually, and as Parents and)	
Next Friends of BRANDON JOSEPH)	
PRATT, a Minor)	
)	
Appellants,)	
)	Cause No. 97-CV-403-WDS
v..)	
)	Bankruptcy No. 95-32397
JAMES N. POURDAS,)	
)	Adv. No. 96-3072
Debtor/Appellee.)	

MEMORANDUM OF OPINION

STIEHL, District Judge:

This matter is before the Court on appeal from the United States Bankruptcy Court for the Southern District of Illinois. For the reasons stated below, this Court affirms the ruling of the bankruptcy court.

BACKGROUND

A Granite City ordinance provides that no person shall possess a pit bull dog within city limits for a period of more than 48 hours without first obtaining a license. **Granite City, Il., Ordinance 6.10.020(A) (October 1989)**. In order to obtain such a license, the owner must file an application accompanied by proof of insurance coverage for potential injury caused by the pit bull. **Ordinance 6.10.020(B)(4) (October, 1989)**. It is undisputed that James Pourdas owned a pit bull in Granite City and did not have the requisite insurance. The pit bull attacked and injured Brandon Joseph Pratt.

In the state court, Pourdas' pit bull was found to be a vicious animal by the Circuit Court for the Third Judicial Circuit, Madison County, Illinois, and was euthanized. Pourdas was additionally found guilty on June 14, 1984, of violating an ordinance entitled "Dogs Running at Large." On September 6, 1995, a default judgment was entered against Pourdas and in favor of appellants in the amount of \$150,000, for violation of the Illinois "dog bite" statute. **510 ILCS 5/16 (1993)**.

Pourdass subsequently filed a Chapter 7 bankruptcy petition. Appellants filed a complaint to

determine dischargeability under 11 U.S.C. § 523(a)(6) and moved for entry of summary judgment, arguing that Pourdas' failure to procure insurance was willful and malicious, thereby making the debt nondischargeable under § 523(a)(6). Appellants further argued that Pourdas' violation of other various ordinances and statutes was also willful and malicious. On October 30, 1996, the bankruptcy court denied appellants' motion and scheduled the complaint for trial. At trial, appellants' sole argument was that Pourdas' failure to procure the required insurance was willful and malicious. On March 27, 1997, the bankruptcy court found in favor of Pourdas, and held that a failure to procure insurance required by law, though willful, was not malicious under § 523(a)(6) because it neither necessarily leads to, nor is substantially certain to cause harm.

In the present appeal, appellants claim that the bankruptcy court erred in its March 27, 1997 opinion and order denying their complaint. Appellants further contend that the bankruptcy court erred in its October 30, 1996 opinion denying their motion for summary judgment.

ANALYSIS

A. STANDARD OF REVIEW

In an appeal from a decision of the bankruptcy court, the District Court will uphold the bankruptcy court's findings of fact unless they are clearly erroneous. **Fed. R. Bankr. P. 8013**. The District Court reviews the bankruptcy court's legal conclusions *de novo*. **In re Marrs-Winn Co., 103 F.3d 584, 589 (7th Cir. 1996)**. Appellants do not dispute the bankruptcy court's factual findings. Rather, appellants question the bankruptcy court's legal conclusions. Accordingly, this Court will utilize a *de novo* standard of review. *Id.*

B. DENIAL OF APPELLANTS' COMPLAINT

The issue on appeal centers around the dischargeability of Pourdas' debt of \$150,000 to appellants. Appellants maintain that the debt is nondischargeable pursuant to 11 U.S.C. § 523(a)(6), despite the bankruptcy court's holding that the debt is in fact dischargeable. **Section 523(a)(6)** provides in pertinent part:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1338(b) of this title does not discharge an individual debtor from any debt—

...

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

11 U.S.C. § 523(a)(6). As previously discussed, appellants argue that Pourdas' failure to procure insurance required by city ordinance constitutes a willful and malicious injury under § **523(a)(6)**, and therefore, the debt to appellants is nondischargeable.

Courts are divided on the meaning of "willful and malicious" under § **523(a)(6)**. The Seventh Circuit adopted the following definitions:

We give effect to the words of the statute by viewing their plain meaning “Under § 523(a)(6) of the Bankruptcy Code, willful means deliberate or intentional . . . [and] [m]alicious means in conscious disregard of one's duties or without just cause or excuse; it does not require ill-will or specific intent to do harm.”

***Matter of Thirtyacre*, 36 F.3d 697, 700 (7th Cir. 1994) quoting *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir. 1986)(internal quotations omitted)**. The court, however, left unanswered the question of whether willfulness or malice requires that the act automatically or necessarily causes injury.

In answering this question, the majority of courts have held that failure to obtain insurance does not in itself satisfy the "willful and malicious" standard under §**23(a)(6)**.¹ ***In re Walker*, 48 F.3d 1161 (11th Cir. 1995)** (intentional failure to procure insurance was not an intentional injury under willful and malicious injury standard); ***In re Hall*, 194 B.R. 580 (Bankr. W.D. Mich. 1996)** (failure to procure workman's compensation insurance did not “necessarily” cause injury, and therefore was not willful or malicious); ***In re Grisham*, 177 B.R. 306 (Bankr. W.D. Mo. 1995)** (failure to maintain automobile insurance was neither willful nor malicious); ***In re Kemmerer*, 156 B.R. 806 (Bankr. S.D. Ind. 1993)** (failure to carry workman's compensation insurance was not in itself malicious); ***In re Driten*, 121 B.R. 509 (Bankr. W.D. Ky. 1990)** (failure to maintain auto insurance did not necessarily cause

¹Courts have reached this conclusion in three ways: (1) a failure to insure is willful but not malicious; (2) a failure to insure is malicious but not willful, or (3) a failure to insure is neither willful nor malicious. The Court finds it unnecessary to determine which categorization is correct, because, not only will the outcome be the same, but the key question is whether the failure to insure caused the injury. Despite the bankruptcy court's finding that Pourdas' conduct was willful, his debt is dischargeable unless his conduct was willful and malicious. The only way the conduct could be considered willful and malicious is if the conduct either necessarily would, or was substantially certain to, cause the injury.

injuries suffered by passenger in accident and was therefore not willful). The majority view focuses on the fact that the failure to insure does not necessarily, or is not substantially certain to, cause the plaintiff's injury. *Walker*, 48 F.3d at 1165 (failure to insure is not substantially certain to cause injury and there is no unbroken chain of events leading from the failure to insure to the employee's injury); *Kemmerer*, 156 B.R. at 809-10 (while failure to procure workman's compensation was wrongful, harm to employee was not substantially certain to follow); *In re Zalowski*, 107 B.R. 431 (Bankr. D. Mass. 1989) (employer's failure to maintain insurance did not necessarily lead to the injury). In other words, there is no direct causal link between the debtor's failure to procure insurance and the specific event that produced the plaintiff's physical injury.

The minority position that a failure to insure is "willful and malicious" under § 523(a)(6) emphasizes the foreseeability that the plaintiff may be injured and therefore a failure to insure will lead to a separate economic injury. *Matter of Ussery*, 179 B.R. 737 (Bankr. S.D. Ga. 1995); *In re Strauss*, 99 B.R. 396 (Bankr. N.D. Ill. 1989); *In re Erickson*, 89 B.R. 850 (Bankr. D. Idaho 1988).

Having considered the different views from other jurisdictions, this Court rejects the minority view and adopts the majority view. Specifically, § 523(a)(6) requires "a Willful *and* malicious injury by the debtor," 11 U.S.C. § 523(a)(6) (emphasis added), not merely a willful and malicious *action* by the debtor that may foreseeably result in a subsequent injury. *See, e.g., Walker*, 48 F.3d at 1164 *citing In re Hampel*, 110 B.R. 88, 93 (Bankr. M.D. Ga. 1990). Engaging in the minority view's foreseeability analysis means that negligent conduct that had an intentional act somewhere in the chain of causation may be held to be willful and malicious. Thus debts which are caused by such negligent conduct, or even conduct that rarely causes harm, may be rendered nondischargeable. *Hall*, 194 B.R. at 582. Section 523(a)(6) clearly does not contemplate such a result.

In the case at hand, appellants do not claim that Pourdas willfully and maliciously caused the personal injury to the dog-bite victim. Appellants claim only that Pourdas' failure to procure insurance was in itself a willful and malicious injury. Pourdas' failure to insure, because it is a statutory violation, is without doubt a wrongful act. However, under the foregoing analysis, appellants' argument must fail

because Pourdas' lack of insurance, in itself, while creating a possibility of future harm, was not the direct cause of appellants' injury. A failure to procure insurance, standing alone, is not sufficient to prove willfulness or malice under § 523(a)(6). Therefore, the bankruptcy court did not err in denying appellants' complaint, and was correct in holding, that the judgment against Pourdas is dischargeable under § 523(a)(6).

C. DENIAL OF APPELLANTS' MOTION FOR SUMMARY JUDGMENT

Appellants further maintain that the bankruptcy court erred in the October 30, 1996 order denying their motion for summary judgment. In this motion, appellants argued that failure to procure insurance is in itself willful and malicious under § 523(a)(6) and that Pourdas' violation of various ordinances and statutes was also in itself willful and malicious. Summary judgment is only appropriate where the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. **Fed. R. Civ. P. 56(c)**.

For reasons previously stated, the Court rejects appellants' contention that a failure to procure insurance is per se a willful and malicious injury under § 523(a)(6). The Court further rejects appellants claim that a violation of an ordinance or statute is in itself a willful and malicious injury. Courts that have considered this question have held that a statutory violation, standing alone, is insufficient to establish a willful and malicious injury. *In re Glass*, 207 B.R. 850 (Bankr. E.D. Mich. 1997); *In re Claburn*, 89 B.R. 629 (Bankr. N.D. Ohio 1987). To hold otherwise would lead to the conclusion that "any violation of the law resulting in civil liability would not be dischargeable under § 523(a)(6)." *Claburn*, 89 B.R. at 631. The bankruptcy court correctly denied appellants' motion for summary judgment.

CONCLUSION

Accordingly, the decision of the bankruptcy court that the \$150,000 judgment against appellee is dischargeable is **AFFIRMED**.

IT IS SO ORDERED.

DATED: April 3, 1998

/s/ William D. Stiehl
DISTRICT JUDGE