

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

IN RE: ) In Proceedings  
) Under Chapter 7  
TERRY WAYNE POWERS, )  
) No. BK 87-30339  
Debtor. )  
  
DAVID WOMBLE, )  
)  
Plaintiff, )  
)  
v. ) ADVERSARY NO.  
) 87-0089  
TERRY WAYNE POWERS, )  
)  
Defendant. )

MEMORANDUM AND ORDER

This matter is before the Court on defendant's Motion for Summary Judgment. Plaintiff previously filed a Complaint to Determine Dischargeability of Debt. In the complaint, plaintiff alleges that while riding a bicycle on a public highway in Belleville, Illinois, he was struck by a motor vehicle driven by defendant, and as a result, sustained severe injuries. Plaintiff further alleges that defendant's actions were willful and malicious, and requests that this Court find defendant's debt to plaintiff nondischargeable under 11 U.S.C. §523(a)(6).

Section 523(a)(6) provides as follows: "A discharge under 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt...for willful and malicious injury by the debtor to another entity or to the property of another entity." The comments following section 523(a)(6) specifically state that "[u]nder this paragraph, 'willful' means

deliberate or intentional." This Court has previously defined willful and malicious conduct as the deliberate or intentional act of a debtor with knowledge that the act will harm another. Champion Home Builders v. Darrell Johnson, Adv. No. 86-0347 (April 27, 1987). Similarly, other case decisions discussing this issue "explicitly reject that reckless disregard of the rights of another, without more, can suffice as proof of willfulness and malice." Matter of Frazee, 60 B.R. 109, 112 (Bankr. W.D. Mo. 1986). "The legislative history makes clear that the 'reckless disregard' standard no longer applies and that proof of 'deliberate or intentional' injury must be established in order to except the debt from discharge." In re Noller, 56 B.R. 36, 38 (Bankr. E.D. Wis. 1985). See also, In re Louis, 49 B.R. 135, 137 (Bankr. E.D. Wis. 1985); United Bank of Southgate v. Nelson, 35 B.R. 766, 776 (Bankr. N.D. Ill. 1983).

At a pretrial conference held July 25, 1987, defendant was granted leave to file his motion for summary judgment within fourteen days, and plaintiff was given fourteen additional days to respond. Defendant's motion was filed July 22, 1987, but plaintiff has failed to respond.

Summary judgment is appropriate only where the record shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56. The party moving for summary judgment has the burden of establishing the lack of a genuine issue of material fact. Korf v. Ball State University, 726 F.2d 1222, 1226 (7th Cir. 1984). The Court must view the evidence, and the reasonable inferences to be drawn therefrom, in the light most favorable to the party opposing summary judgment. Rule

56(e) provides, in pertinent part, as follows:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

In an affidavit attached to defendant's Motion for Summary Judgment, defendant states the following facts:

1. At the time of the accident, it was dark and there were no street lights or other lights to illuminate the intersection;
2. Defendant was driving a 1977 Ford van in a southerly direction;
3. Defendant made a complete stop at the intersection, and then began to turn right, traveling in a westerly direction;
4. Defendant observed no traffic traveling westbound, but subsequently collided with plaintiff, as he was making his turn;
5. Plaintiff had been traveling in an easterly direction in the westbound lane, i.e., plaintiff was traveling in the wrong lane;
6. Plaintiff's bicycle did not have any lights or reflectors that would make it visible in the darkness;
7. No tickets were issued as a result of the accident.

These facts, which plaintiff has not controverted, clearly demonstrate that defendant's actions were not willful and malicious within the meaning of section 523(a)(6) of the Bankruptcy Code. Plaintiff, in failing to respond, has also failed to set forth specific facts showing that there is a genuine issue for trial, as required by Rule 56(e).

Accordingly, defendant's motion for summary judgment is GRANTED  
and plaintiff's complaint is DISMISSED.

----- /s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: August 31, 1987