

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

CASE NO. 00-23211

PAUL D. WILLIAMS and
BETH ANNE WILLIAMS,

Debtors.

DECISION & ORDER

ROBERT M. GUZMAN and
SHARON GUZMAN,

Plaintiffs,

V.

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BETH ANNE WILLIAMS,

Defendant.

BACKGROUND

On October 30, 2000, Paul D. Williams and Beth Anne Williams (the "Debtors") filed a petition initiating a Chapter 7 case. On the Schedules and Statements required to be filed by Section 521 and Rule 1007, the Debtors indicated that Robert Guzman ("Guzman") had commenced a pre-petition negligence action (the "State Court Action") against Beth Anne Williams ("Williams") in the New York State Supreme Court, claiming damages of \$500,000.00.

On February 2, 2001, Guzman commenced an Adversary Proceeding against Williams which requested that the Court

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determine that his claims against Williams in the State Court Action be determined to be nondischargeable pursuant to Section 523(a)(6).¹

The Complaint in the Adversary Proceeding alleged that: (1) on June 16, 1995, Williams willfully and maliciously charged Guzman with harassment in the first degree, resulting in his false arrest and prosecution; (2) on or about November 14, 1995, the charge of harassment in the first degree was dismissed with prejudice in the Hamlin Town Justice Court; (3) on June 14, 1996, Guzman commenced the State Court Action against Williams, the Monroe County Sheriff's Department and several individual Sheriff's Deputies; and (4) in the State Court Action, Guzman alleged that the defendants were liable in damages for: (a) malicious prosecution, false arrest and false imprisonment; (b) assault and battery; and (c) violations of his civil rights. Attached to the Complaint in the Adversary Proceeding was a copy

¹ Section 523(a)(6) provides that:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -

(6) 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) (2000).

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of Guzman's complaint in the State Court Action (the "State Court Complaint").

On March 5, 2001, Williams interposed an Answer to the Complaint in the Adversary Proceeding which generally denied the allegations of the Complaint and included, as exhibits, copies of: (1) her Answer and Counterclaim in the State Court Action; (2) the June 16, 1995 sworn Information (the "Information"), which charged Guzman with harassment in the first degree;² and (3) a crime investigation report dated June 16, 1995 (the "Crime Report") prepared by Deputy Sheriff Barrus ("Deputy Barrus") in connection with the Information.

On October 9, 2001, the Court conducted an Evidentiary Hearing at which Guzman, Williams, James Hofschneider

² The Information read in part:

"The facts upon which this information is based are as follows:

THAT SAID DEFENDENT DID ON THE AFORESAID TIME AND PLACE, INTENTIONALLY AND REPEATEDLY HARASS ANOTHER PERSON BY ENGAGING IN A COURSE OF CONDUCT OR REPEATEDLY COMMITTING ACTS WHICH PLACE SUCH PERSON IN REASONABLE FEAR OF PHYSICAL INJURY TO WIT:

ROBERT GUZMAN, DID, ON JUNE 19, 1994, JULY 24, 1994 AND AGAIN ON JUNE 16, 1995 PARK HIS BOAT OFFSHORE OF MY FAMILIES SWIMMING AREA LOCATED AT 5691 W. WAUTOMA BCH RD. HAMLIN N.Y. I AM AFRAID OF MR. GUZMAN BECAUSE HE CARRIES A GUN AND THAT HE MIGHT TRY AND TAKE MY CHILDREN."

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("Hofschneider"), Williams' neighbor for nearly ten years, and Karen Hobson ("Hobson"), Williams' friend since 1987, testified.

DISCUSSION

I. SECTION 523(a)(6)

We know from the Decision of the United States Supreme Court in *Kawaauhau v. Geiger*, 523 U.S. 57 (1998) that the exception to discharge set forth in Section 523(a)(6) for a willful and malicious injury: (1) covers acts done with the actual intent to cause injury; (2) does not cover deliberate or intentional acts that merely lead to injury; (3) covers intentional torts that require the actor to intend the consequences of an act, not simply the act itself; and (4) does not cover recklessly or negligently inflicted injuries.

II. SUMMARY OF DECISION

Williams acted willfully and maliciously, with the intent to have Guzman arrested and to injure him, when on June 16, 1995 she: (1) dialed 911; (2) made an inflammatory and partially false report to the Monroe County Sheriff's Department, which essentially portrayed Guzman as an armed and dangerous potential kidnapper; and (3) signed the Information, which charged Guzman with harassment even though she was never in any fear of physical injury which the Court could find was reasonable.

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The actions of Williams were willful and malicious because she: (1) had no actual, direct or otherwise credible knowledge or information that Guzman had a gun on board his boat on June 19, 1994, July 24, 1994 or June 16, 1995; (2) knew that Guzman had not been warned by her, the Monroe County Sheriff's Department or any other individual that if he "parked" his boat in public waters offshore from a neighbor's beachfront property where she and her family often spent time, she would file criminal charges against him, or that he might be arrested; (3) knew from a prior incident in 1988, that if she signed the Information charging Guzman with harassment in the first degree, he would be arrested; (4) knew that if he were arrested he would be "furious" and would have to engage legal counsel to defend himself against the criminal charge; (5) was never in any physical danger from Guzman's actions on June 19, 1994, July 24, 1994 or June 16, 1995 that the Court could find was reasonable; and (6) knew that the Monroe County Sheriff's Department would act expeditiously, and possibly with force, to arrest Guzman on June 16, 1995 if she reported to the Sheriff's Deputy that: (a) Guzman carried a gun, when she was not sure whether he was in possession of a gun on that day; (b) "she saw him once 'wield' a pistol at another man after an argument at a boat launch,"

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which she knew was false; (c) she knows he keeps a gun on the boat, which she had no proof of on June 16, 1995; and (d) she was in fear for herself and her family because Guzman had made statements to her that he wanted to take her son and go away, which Guzman denied.

Should a judgment for damages be entered in the State Court Action against Williams in favor of Guzman arising out of the June 16, 1995 arrest and prosecution, that judgment shall be nondischargeable as a willful and malicious injury pursuant to Section 523(a)(6).

III. UNDISPUTED BACKGROUND FACTS

From the testimony at the October 9, 2001 Evidentiary Hearing, the following facts are undisputed:

(1) While Guzman was still legally married, he and Williams met at Eastman Kodak Company where they were both employed. Thereafter, they started dating, lived together and parented a male child ("Christopher"), who was born on May 5, 1986;

(2) On February 14, 1988, the relationship between Guzman and Williams terminated;

(3) On February 24, 1988, Williams married Paul Williams and she and Christopher moved in with him;

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(4) After her marriage to Paul Williams, Williams periodically permitted Guzman to see Christopher at her residence through April 22, 1988;

(5) On April 22, 1988, Williams charged Guzman with aggravated harassment in the second degree. Guzman received an appearance ticket, appeared in Parma Town Court, was given an adjournment in contemplation of dismissal and the charges were dismissed after six months;

(6) After Williams filed the April 1988 harassment complaint, she no longer permitted Guzman to visit Christopher;

(7) In January 1989, Guzman executed a Waiver of Notice of Adoption in a proceeding commenced by Paul Williams to adopt Christopher;

(8) In August 1989, the adoption petition by Paul Williams was finalized and he adopted Christopher;

(9) At the request of Guzman and his attorney, from sometime in 1991 until approximately January 1994, Williams permitted Guzman to visit Christopher once a month for about two hours per visit;

(10) From Christopher's birth in May 1986 through the finalization of his adoption in August 1989, Guzman never paid

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or provided any significant monetary support to Williams for Christopher, which angered Williams;

(11) In 1994, Guzman commenced a proceeding in the Monroe County Family Court seeking visitation of Christopher, which was denied in May 1994 because Guzman had no legally enforceable right to visitation after the adoption;

(12) In 1994 and 1995, Guzman owned a 26' Wellcraft Cabin Cruiser which he kept at a facility in Old Orchard Creek on Lake Ontario. Old Orchard Creek is west of the beach off Wautoma Beach Road, Hilton, New York, which is where Williams resided with Christopher and Paul Williams after 1990;

(13) On June 19, 1994, July 24, 1994 and June 16, 1995, Guzman was in his boat on Lake Ontario offshore of the beachfront property owned by the Baxters, a neighbor of Williams, where at least Williams was on all three occasions;

(14) On one of the two occasions in 1994, Guzman was watching the beach with binoculars, saw that Christopher was on the beach with Williams, called the Williams house on his cell phone, spoke with Paul Williams, asked whether he could visit with Christopher, brought his boat to within 30'-40' of shore, yelled onto the beach to Williams to request that he be able to

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see Christopher, was told by Williams that he could not see Christopher, and left;

(15) After the incident in 1994 when Guzman brought his boat near the shore and had oral communications with Williams, Williams contacted the Monroe County Sheriff's Department, which, she alleges, advised her that if there was a third similar incident, she could charge Guzman with harassment;

(16) On June 16, 1995, Hobson and Williams were on the beach together, Hobson pointed out to Williams that a boat which might be Guzman's was offshore, Williams identified the boat as being Guzman's boat, Williams and Hobson went back to the Williams residence and discussed whether they should contact the Monroe County Sheriff's Department, Williams decided to contact the Sheriff's Department and called 911;

(17) On June 16, 1995, none of Williams' children were present on the beach or at their home when Guzman's boat was seen offshore and Williams called 911;

(18) Deputy Barrus responded to the 911 call, interviewed Williams, and the Information and Crime Report were completed;

(19) Within an hour after the Information and Crime Report were completed, Guzman's boat, which was now at the Harbor Fest,

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an annual festival attended by thousands of people, was boarded by the Coast Guard;

(20) When Guzman was asked by the Coast Guard to produce identification, he went below deck to retrieve his wallet, at which time he was arrested at gunpoint by the Monroe County Sheriff's Department;

(21) Guzman alleged that the Sheriff's Deputies, in front of hundreds of people at the Harbor Fest, forced him to the floor of the boat, dragged him across the deck of his boat, handcuffed him and carried him off to the Sheriff's boat located nearby, where they kept him handcuffed in custody for approximately one hour; and

(22) As a result of the alleged violent arrest by the Monroe County Sheriff's Department, Guzman alleged that he has had severe emotional problems and other damages.

IV. WILLFUL AND MALICIOUS INJURY

On June 16, 1995, even though Williams could not be certain that Guzman had a gun on his boat on June 19, 1994, July 24, 1994 or June 16, 1995, she made the statement to the Monroe County Sheriff's Deputy, included in the Information, that "I am afraid of Mr. Guzman because he carries a gun."

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On June 16, 1995, even though Williams knew that it was a false statement, she made the statement to the Monroe County Sheriff's Deputy, included in the Crime Report, that ". . . she saw him (Guzman) once wield a pistol at another man after an argument at a boat launch."

On June 16, 1995, even though Williams had no way of knowing for sure that Guzman had a gun on his boat that day, she made the statement to the Monroe County Sheriff's Deputy, included in the Crime Report, that ". . . she knows he keeps a gun on the boat."

After listening to the testimony of Williams and Guzman, observing their demeanor, and judging their credibility, although Guzman may have made statements to Williams regarding Christopher out of frustration, I do not believe that he made statements to Williams which she could reasonably have, or ever did, interpret as indicating that Guzman would actually kidnap Christopher. Nevertheless, on June 16, 1995, Williams reported to Deputy Barrus that she believed Guzman would kidnap Christopher.

Although Williams may have been frustrated by Guzman's actions in "parking" his boat offshore on June 19, 1994, July 24, 1994 and June 16, 1995, and may have had many negative

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feelings about Guzman, she was never in any actual danger of physical injury from Guzman on those dates, since: (1) there was always at least one other adult present with Williams, and on several of the dates, there were a number of male adults present, including her husband, Paul; and (2) Guzman never did anything on those dates to physically threaten Williams or otherwise indicate that he would harm her. Therefore, Williams acted with malice when she swore to the Information which stated that Guzman had committed acts "which placed her 'in reasonable fear of physical injury.'"

Williams wanted Guzman arrested and humiliated, and she deliberately made a report to the Monroe County Sheriff's Department that was in some respects false, misleading and inflammatory, in order to ensure that Guzman was arrested as an armed and dangerous individual.

I believe the evidence indicates that Williams did this with the actual intent to injure Guzman, and, therefore, any proximately caused and resulting damages are nondischargeable under Section 523(a)(6) as a willful and malicious injury.³

³ A May 9, 2001 Letter Brief filed by the Attorneys for Williams, asserted that the Bankruptcy Court could and must determine the issue of nondischargeability, as a matter of Federal Law, but not determine whether there was a false arrest or malicious prosecution. These issues would be determined in the State Court Action, if the Bankruptcy Court found a willful and malicious

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CONCLUSION

Should a judgment for damages be entered in the State Court Action against Williams in favor of Guzman as a result of Guzman's prosecution and arrest arising out of the Information and Crime Report, that judgment is nondischargeable as a willful and malicious injury.⁴

Included in the State Court Action are causes of action which Sharon Guzman is prosecuting against Williams. These causes of action are discharged, since none of Williams' actions were intended to or could be reasonably anticipated to result in injury to Sharon Guzman.

The stay provided by Section 362 is terminated to allow Guzman to prosecute the State Court Action.

IT IS SO ORDERED.

**HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE**

Dated: November 20, 2001

injury.

⁴ Guzman has elected to prosecute various specific causes of action against Williams in the State Court Action. This Court's determination of willful and malicious for purposes of nondischargeability is not intended to be in any way determinative of any of the various elements that Guzman must prove in the State Court Action in order to obtain a judgment against Williams.