

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: IRENE T. FINNIE

CASE NO. 06-11443-DWH

NORTH MISSISSIPPI MEDICAL CENTER

PLAINTIFF

VERSUS

ADV. PROC. NO. 06-1181-DWH

IRENE T. FINNIE

DEFENDANT

OPINION

On consideration before the court is a motion for summary judgment filed in the above captioned adversary proceeding by North Mississippi Medical Center (“NMMC”); no response having been filed by the debtor/defendant, Irene T. Finnie, (“Finnie”); and the court, having considered said motion, finds as follows, to-wit:

I.

The court has jurisdiction of the subject matter of and the parties to this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A) and (I).

II.

On July 3, 2006, Finnie filed a voluntary petition for bankruptcy relief pursuant to Chapter 7 of the Bankruptcy Code. In this proceeding, NMMC has objected to the dischargeability of the debt owed to it by Finnie.

Finnie is indebted to NMMC as a result of medical care and facilities provided on August 4, 2004, through August 5, 2004, in the sum of \$14,065.00. On August 3, 2004, Finnie executed a Consent for Treatment, Admission, and Release of Health Information Agreement. Pursuant to

the terms of the agreement, specifically Paragraph 7, Finnie assigned to NMMC “all rights, benefits, and interest under any insurance policy, health plan, workers’ compensation, or any third party payor liable to [Finnie], in consideration for services rendered by the hospital.” Finnie also authorized the direct payment of any claims to NMMC made by any applicable insurance policy or health plan.

Paragraph 8 of the agreement provided that Finnie remained “financially responsible to the hospital for all charges not covered or paid by insurance,” and that said charges were payable upon demand. Additionally, the agreement contained language that stated, “that in case of default of payment, if this account is placed in the hands of a collection agency or attorney for collection or suit, all reasonable collection fees, reasonable attorney fees, costs and other expenses will be paid by me.”

Effective December 1, 2003, Blue Cross/Blue Shield of Mississippi (“Blue Cross”), a medical insurer which provided coverage for Finnie, terminated its contract with NMMC. Thereafter, the payment of claims by Blue Cross for services rendered by NMMC were submitted directly to the insured, and the insured was responsible for remitting the amounts due to NMMC. Blue Cross paid \$11,252.00 to Finnie for the medical services and facilities provided by NMMC. Finnie failed to remit these insurance proceeds to NMMC, even though there was a valid pre-petition assignment of the proceeds to NMMC.

### III.

The issue before this court is whether Finnie’s failure to remit to NMMC the insurance proceeds paid to her by Blue Cross constitutes a non-dischargeable debt pursuant to 11 U.S.C. §523(a)(6) which states in pertinent part, “A discharge under §727...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.”

In the case of *Respanti v. Keaty (Matter of Keaty)*, 397 F.3d 264 (5th Cir. 2005), Judge Carolyn King discussed the Fifth Circuit’s standard for maintaining a cause of action under §523(a)(6) of the Bankruptcy Code, as follows:

Section 523(a)(6) of the Bankruptcy Code excepts from discharge any debt incurred for willful and malicious injury by the debtor to another entity. 11 U.S.C. §523(a)(6) (2004).

Section 523(a)(6) of the Bankruptcy Code specifically provides:

§523. Exceptions to discharge:

(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...

*Id.*

The Supreme Court, in *Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S. Ct. 974, 140 L.Ed.2d. 90 (1998), stated that “[t]he word ‘willful’ in (a)(6) modifies the word ‘injury’ indicating that non-dischargeability takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury.” The Fifth Circuit extended *Kawaauhau’s* reasoning in *Miller v. J.D. Abrams, Inc. (In re Miller)*, 156 F.3d. 598, 603 (5th Cir. 1998), and stated that “either objective substantial certainty [of injury] or subjective motive [to injury] meets the Supreme Court’s definition of ‘willful...injury’ in §523(a)(6).” The court in *Miller* went on to define the word “malicious” and specifically rejected that it meant an act without just cause or excuse. *Id.* at 605. Instead, the court defined “malicious” as an act done with the actual intent to cause injury. *Id.* at 606. The court noted that this definition is synonymous with the definition of “willful” and thus aggregated “willful and malicious” into a unitary concept. Thus, the court held that “an injury is ‘willful and malicious’ where there is either an objective substantial certainty of harm or a subjective motive to cause harm.” *Id.* at 606; *see also, Williams v. IBEW Local 520 (In re Williams)*, 337 F.3d 504, 509 (2003).

397 F.3d at 269-70.

This court has previously applied the objective substantial certainty of harm standard in the case of *In re Smith*, 302 B.R. 530 (Bankr. N.D. MS 2003), an adversary proceeding involving the debtor's wrongful conversion of annuity payments which had been pledged to a creditor.

#### IV.

On December 4, 2006, NMMC propounded its first set of interrogatories, first request for production of documents, and first requests for admissions to Finnie. Counsel for NMMC received no timely response to the discovery requests and, on February 8, 2007, sent correspondence to counsel for Finnie requesting responses to the requests. The thirty day period for answering the requests, as set forth in Rule 7036(a) of the Federal Rules of Bankruptcy Procedure and Rule 36(a) of the Federal Rules of Civil Procedure, expired without Finnie filing a response or objection.

“The matter is admitted unless, within thirty days after service of the request...the party to whom the request is directed serves upon the party requesting the admission a written objection or answer addressed to the matter, signed by the party or his attorney...” Fed. Rule Civ. Proc. 36(a). “Any matter admitted under this rule is conclusively established...” Fed. Rule Civ. Proc. 36(b). *See, In re Carney*, 258 F.3d 415 (5th Cir. 2001). Finnie's failure to serve a timely answer or objection to NMMC's requests for admissions requires those matters set forth in the requests to be deemed admitted.

Consequently, Finnie had admitted the following:

(1) That she executed the consent agreement assigning to NMMC all rights, benefits and interest under her insurance policy with Blue Cross, as well as, authorizing payment directly to NMMC of any claims payable under the insurance policy for services rendered by NMMC.

(2) That she remains financially responsible to NMMC for all charges not covered or paid by insurance.

(3) That although Blue Cross sent Finnie the sum of \$11,252.00, representing the payment of the costs of medical services and facilities provided by NMMC, she did not remit these insurance proceeds to NMMC.

#### IV.

As a result of Finnie's admissions, there are no longer any genuine material factual issues in dispute, and NMMC is entitled to summary judgment as a matter of law. The amount of the insurance proceeds which Finnie failed to remit to NMMC in the sum of \$11,252.00 constitutes a non-dischargeable debt pursuant to 11 U.S.C. §523(a)(6). NMMC shall also be permitted to recover its reasonable attorney's fees in an amount to be determined by the court, plus all costs of this proceeding. NMMC shall be granted 10 days to submit its itemization of attorney's fees for review.

A separate order, consistent with this Opinion, shall be entered contemporaneously herewith.

This the 2nd day of May, 2007.

/s/ David W. Houston, III  
DAVID W. HOUSTON, III  
UNITED STATES BANKRUPTCY JUDGE