UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE

Jerry F. Blurton,	**Case No. 01-11191**
Debtor.	**Chapter 7**
Kevin Stumpenhorst,	
Plaintiff,	
v.	**Adv. Pro. No. 01-5180**
Jerry F. Blurton,	
Defendant.	

MEMORANDUM OPINION AND ORDER RE
COMPLAINT TO DETERMINE NONDISCHARGEABILITY OF DEBT

At issue in this adversary proceeding is the dischargeability of a $1,300,000.00 judgment the Circuit Court for Madison County, Tennessee, entered on August 17, 2000, in favor of Kevin Stumpenhorst ("Stumpenhorst"). Stumpenhorst alleges that the judgment is non-dischargeable pursuant to 11 U.S.C. § 523(a)(9). The debtor, Jerry F. Blurton, Jr., ("Blurton" or "debtor"), disputes this allegation and asserts that the judgment is dischargeable in his chapter 7 case.

The Court conducted a trial in this matter on May 13, 2002. FED. R. BANKR. P. 7001. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the trial and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

On November 28, 1996, Blurton and Stumpenhorst were involved in an automobile accident whereby Blurton drove his vehicle into the back of a semi-tractor trailer rig. Stumpenhorst was a passenger in the debtor's car at the time of the accident. Following the accident, Blurton consented to a blood alcohol test. The results of said test showed that Blurton had a blood alcohol level of .13 at the time of the accident.

On March 31, 1997, a Grand Jury returned an indictment against Blurton for (1) driving while under the influence of a drug and/ or intoxicant; (2) 2 counts of aggravated assault; (3) reckless driving; (4) reckless endangerment; and (5) violation of alcoholic beverage restriction. A criminal court jury trial was held in the Circuit Court of Madison County, Tennessee, on October 13, 1998, wherein the debtor was found guilty and convicted of:

(1) Violating the Drinking Age Law at the time of the accident in violation of T.C.A. § 57-4-203(b)(2);

(2) Reckless Endangerment at the time of the accident in violation of T.C.A. § 39-13-103;

(3) Reckless Driving at the time of the accident in violation of T.C.A. § 55-10-205;

(4) Aggravated Assault against Stumpenhorst at the time of the accident in violation of T.C.A. § 39-13-102;

(5) Aggravated Assault against Eugene Mestan (the other passenger in his car) at the time of the accident in violation of T.C.A. § 39-13-102; and

(6) Driving Under the Influence in violation of T.C.A. § 55-10-401.

Blurton's criminal conviction was entered by the Court on December 8, 1998.

Following Blurton's criminal conviction, Stumpenhorst filed a negligence action against the debtor to recover damages for the personal injuries Stumpenhorst suffered in the accident. On March 19, 1999, Judge Morgan of the Circuit Court for Madison County, Tennessee, granted Stumpenhorst summary judgment on the issue of liability holding that the Debtor was liable to Stumpenhorst for the injuries sustained on November 28, 1996, as a result of the debtor's negligence. The matter was then set for trial to determine the amount of damages Stumpenhorst was to receive for the injuries he sustained as a result of Blurton's negligence. On August 17, 2000, a jury awarded Stumpenhorst $1,300,000.00 for his personal "injuries that were legally caused by the Defendant, Jerry Blurton, Jr.'s negligence in this case."

II. CONCLUSIONS OF LAW

Section 523(a)(9) of the Bankruptcy Code 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 –
>
> . . .
>
> (9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

11 U.S.C. § 523(a)(9). Subsection (9) was added to the Bankruptcy Code by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 371, 98 Stat. 364. "The purpose of this section is 'to protect the victims of debtors who have unlawfully driven while intoxicated.'" *State of Michigan Assigned Claims Facility v. Felski (In re Felski)*, 277 B.R. 732, 735 (E.D. Mich. 2002) (citing *In re Dunn*, 203 B.R. 414, 417 (E.D. Mich. 1996)). In order to

prevail in a § 523(a)(9) action, the creditor must establish, by a preponderance of the evidence,[1] that:

> (1) the debt resulted from a death or personal injury;
> (2) the death or personal injury was caused by the operation of a motor vehicle by the debtor; and
> (3) the debtor was intoxicated at the time of operating the motor vehicle.

Id. at 735. Whether or not the debtor was legally intoxicated at the time of operating the motor vehicle is determined by looking to the laws of the state in which the motor vehicle was operated. *In re Cunningham*, 48 B.R. 641 (Bankr. W.D. Tenn. 1985); *In re Jackson*, 77 B.R. 120 (Bankr. N.D. Ohio 1987); *In re Humphrey*, 102 B.R. 629 (Bankr. S.D. Ohio 1989); *In re Barnes*, 266 B.R. 397 (8th Cir. BAP 2001).

In objecting to the Plaintiff's complaint, the Debtor has asserted two grounds for discharging Stumpenhorst's $1.3 million award. First, Blurton has alleged that there is a problem with the chain of evidence in the handling of Blurton's blood sample. Secondly, Blurton has alleged that the civil judgment was based on a theory of negligence and not his intoxication, thereby making the civil judgment dischargeable. For purposes of clarity, the Court will address each of these grounds separately.

A. Chain of Evidence

By claiming that there was a break in the chain of evidence in the handling of his blood sample, the Debtor is attempting to collaterally attack the Circuit Court's criminal DUI conviction. However meritorious this claim may be, the appropriate arena in which to make this

[1]*Grogan v. Garner*, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (U.S. 1991).

allegation was the state appellate courts. The Rooker-Feldman doctrine, as set forth by the United States Supreme Court in the cases of *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) and *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), dictates that "United States District Courts[[2]] . . . do not have jurisdiction . . . over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review of those decisions may only be had in [the Supreme] Court." *Feldman*, 460 U.S. at 486, 103 S.Ct. at 1303; see also, *Patmon v. Mich. Supreme Court*, 224 F.3d 504, 506-07 (6th Cir. 2000); *Tropf v. Fidelity Nat'l. Title Insurance* Co., 289 F.3d 929 (6th Cir. 2002); *Singleton v. Fifth Third Bank of Western Ohio (In re Singleton),* 230 B.R. 533, 536 (6th Cir. BAP 1999); *Alworth v. Levy (In re Levy),* 250 B.R. 638, 643 (Bankr. W.D. Tenn.2000). Thus, a debtor cannot fail to appeal a particular ruling or issue in the state court system and then attempt to use a lower federal court to reverse or void the state court ruling. *Singleton,* 230 B.R. at 536-37. The only action the lower federal court may take with regard to the state court verdict/judgment is to determine the dischargeability of the debt arising out of it. *Sill v. Sweeney (In re Sweeney),* 276 B.R. 186, 195 (6th Cir. BAP 2002); *Singleton*, 230 B.R. at 536-37.

B. Negligence v. Intoxication

As a second reason for denying the Plaintiff's complaint for non-dischargeability, the Debtor has alleged that the $1.3 million civil judgment was not based on any evidence of

[2]The bankruptcy judges in each judicial district constitute a unit of the district court known as the bankruptcy court for that district. 28 U.S.C. § 151.

intoxication. Blurton instead asserts that the civil judgment was based on a theory of negligence, which does not satisfy the requirements of § 523(a)(9).

In a case very similar to the one at bar, *Travelers Insurance Co. v. Scholz (In re Scholz),* 111 B.R. 651 (Bankr. N.D. Ohio 1990), Brian Scholz, ("Scholz"), was involved in an automobile accident and was cited for driving under the influence of alcohol with a blood alcohol level of more than .10. Scholz entered a "not guilty" plea at his arraignment, but later changed his plea to "no contest." The state court found him guilty of driving under the influence and sentenced him to seven days in jail. In a subsequent civil proceeding, Travelers Insurance Company, ("Travelers"), sued Scholz under a theory of negligence to recover monies the company had paid its insured for injuries sustained in the accident with Scholz. Scholz did not respond to the insurance company's complaint and a default judgment in the amount of $4,303.68 was awarded. *Id.* at 651.

After Scholz filed chapter 7, Travelers filed a non-dischargeability proceeding against him pursuant to § 523(a)(9). Travelers alleged that the state court default judgment taken together with the criminal conviction satisfied the requirements for § 523(a)(9). Scholz, on the other hand, argued that the civil judgment was based on simple negligence with no mention of the intoxication made at the trial. In siding with Travelers, the bankruptcy court found that:

> The effect of the Debtor's "no contest" plea, and the state court's finding of guilty, was an imposition of liability. . . .It is unnecessary for the requisite elements to be adjudicated in the same judgment so long as both elements of § 523(a)(9) were established prior to a debtor's bankruptcy filing by a court of record. Thusly, the Debtor's contention that the later civil action default judgment is silent regarding

> a finding of intoxication thereby defeating dischargeability is meritless. The record, as a whole supports nondischargeability under § 523(a)(9).

Id. at 654-55.

In the case at bar, there is a state court criminal conviction for driving under the influence and a state court civil judgment. Although no mention of intoxication was made at the civil trial, damages were awarded for injuries Stumpenhorst sustained in the accident on November 28, 1996. This was the same accident for which Blurton was found guilty of DUI. The Court finds that the criminal conviction and the civil judgment, taken together, sufficiently satisfy the requirements of § 523(a)(9). The fact that a default judgment in the Scholz case was enough to impose liability under § 523(a)(9) convince this Court that actually litigated judgment in the case at bar definitely entitle Stumpenhorst to a finding of non-dischargeability.

III. ORDER

It is therefore **ORDERED** that the Complaint to Determine nondischargeability of Debt is **GRANTED.** The Plaintiff is hereby awarded a non-dischargeable judgment against the Debtor/Defendant in the amount of $1,300,000.00.

IT IS SO ORDERED.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: July 16, 2002