

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
TIMOTHY LEE O'BRIEN,)	CASE NO. 05-34600 HCD
)	CHAPTER 7
)	
DEBTOR.)	
)	
)	
SANDRA FURLONG and)	
NATHAN FURLONG,)	
)	
PLAINTIFFS,)	
vs.)	PROC. NO. 06-3018
)	
TIMOTHY LEE O'BRIEN,)	
)	
DEFENDANT.)	

Appearances:

Cassandra Hine, Esq., counsel for plaintiffs, 52 West Lake Street, Knox, Indiana 46534; and

Duane Hartman, Esq., counsel for defendant, Blachly, Tabor, Bozik & Hartman, LLC, 56 South Washington, Suite 401, Valparaiso, Indiana 46383.

MEMORANDUM OF DECISION

At South Bend, Indiana, on September 28, 2007.

Before the court is the "Complaint Under 523(c) of the Bankruptcy Code to Determine the Dischargeability of a Debt," filed by plaintiffs Sandra Furlong and her son Nathan Furlong against chapter 7 debtor Timothy Lee O'Brien, alleging that the debtor willfully and maliciously injured the plaintiffs' property and deprived them of its use, pursuant to 11 U.S.C. § 523(a)(6). After a trial was conducted on the Complaint, the court took the matter under advisement. For the reasons that follow, the court denies the relief sought in the plaintiffs' Complaint.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(I) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rules of Bankruptcy Procedure 7052 and 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

Timothy Lee O'Brien filed his chapter 7 bankruptcy petition on August 17, 2005. The plaintiffs Sandra and Nathan Furlong, mother and son, timely filed a Complaint against the defendant under 11 U.S.C. § 523(a)(6), alleging that he "did willfully and maliciously injure Sandra's and Nathan's property and deprive them of all use thereof." R. 1, ¶ 2. According to the Complaint, the plaintiffs lived with the defendant in a home in Knox, Indiana, for 2 years and 8 months. The plaintiffs alleged in the Complaint that, after they moved out of the home in October 2003, the defendant did not allow Sandra Furlong to retrieve her personal property, which she valued at \$12,418. They also claimed that "[t]he debt owed to Sandra and Nathan should also be excepted [from discharge] as relating to their interest in personal property and in real property held by Debtor/Defendant under a mortgage that he has reaffirmed under the instant proceedings." *Id.*, ¶ 3. The defendant's Answer to the Complaint denied the allegations. *See* R. 6, ¶ 3.

On September 12, 2006, the plaintiffs filed a Motion for Summary Judgment, insisting that no material issue of genuine fact existed and that they were entitled to judgment as a matter of law. The court, finding that the material facts were highly disputed, denied the plaintiffs' motion and set the matter for trial.

The court conducted a trial on the Complaint on May 14, 2007. It granted the defendant's request for a separation of witnesses and accepted the plaintiffs' withdrawal of the breach of contract claim. The plaintiffs' case was premised on the theory that the defendant willfully and maliciously converted the plaintiffs' personal and real property and caused injury to it. The trial testimony is presented in sufficient detail to demonstrate the inconsistent versions of the underlying events and the nebulous nature of the plaintiffs' claim.

The first witness to testify was the plaintiff Sandra Furlong, whose profession is a home health care provider. She testified that she now lives with her mother but that she and two of her three children had lived with the defendant Tim O'Brien on a farm until 2003. She stated that they borrowed \$2,000 and put \$10,000 down jointly to purchase the farm, but that the deed and financing papers were in Tim O'Brien's name, not hers.¹

According to Sandra Furlong, the farm had more than 18 acres, and Tim purchased it for \$54,900. Both of their families were in Knox, both had gone through a divorce, and both liked horses, so they bought the farm. It was dilapidated, but there were two mobile homes on the property in which they could live until they built a house. Tim had been living in Chicago, but he arranged a job transfer. While he was still working in Chicago, however, Sandra spent many hours cleaning the property and burning leaves to make it presentable. Her son, daughter, and mother helped, as well. They cleared the property for the house they planned to build. Sandra brought her own possessions to the farm: Two antique rockers, a children's baby dresser handed down from her cousins, antique trunks, and tables were stored in the barn and the loft, she said.

In the fall of 2003, however, Tim thought Sandra was having an affair; he told her to pack up their things and get out. She insisted that she was not having an affair. However, she explained that she had been working very hard, at her job and the farm, and wanted to have fun. A man named David Wilson had invited her

¹ Sandra Furlong testified that, because her ex-husband was not paying child support, she went on welfare for a while to get medical support. She thought it was best not to have her name on the deed to the farm, for that reason. She said that she later talked to a lawyer about getting her name on the deed. On cross examination, she was asked to clarify why she was on public aid. Sandra testified that she was on welfare for three years, while she was living with her mother, so that the children would have medical insurance. She did not remember at that time, during cross examination, if she was on welfare when she lived with Tim on the farm.

three times to go riding in a particular park, and once she went. She said they were not romantically involved then, but admitted that they became involved months later, after she and Tim separated. Even though she was not involved with the other man, Tim was angry and told her that, if she wanted to go riding horses with other men, she must get out of the house. He told her to leave several times. Sandra said she could not live in that situation, and she and her children left. She testified that it had been a mistake to allow his name to be the only name on the deed, because it gave him the right to say she had to leave.

When she moved out, she took her belongings in the house – beds, the personal effects of her children, everything in the bedrooms, all her personal effects in the house. Because she tried to get out as quickly as possible, she did not go to the barn to get the antiques. After she left, because she was working and taking care of the new house, there were only certain times that she could go back to the farm to get her other items. She had a few telephone conversations with Tim, some months after she moved out. Sometimes she called him and sometimes he called her. During the conversations, even though he first refused to let her come get things, they did agree on which of the ten horses Sandra could take. Tim telephoned her, one day, to tell her to come get the horses. After the phone conversations, however, when Sandra went to the farm for the horses, she said Tim came out with a rifle. He told her that if she tried to take one of the horses, he would shoot them all. He then fired a round in the air. That occurred in September or October 2003.

Sandra remembered other items she did not retrieve: a round pen for training colts, worth about \$800-\$900; a cement round table with three benches, worth about \$350-\$500, and perhaps 30 or more large items, estimated to be worth around \$14,000. One day when she returned to the farm, to get her things in the barn, he phoned the police. An officer came out to the farm and told her that, because the deed to the property was in his name, she had to leave and arrange for a lawyer to get her belongings.

Apparently on another occasion in the fall, she cannot remember why, but Tim let Sandra come to the farm, to the barn area, and she saw a burn pile, with some handles, pieces from a trunk, and other parts of her property in it. That was her last trip to the farm. She testified that a restraining order was issued against her

sometime after she moved off the farm. Sandra said she could not understand. She remembered a past incident, however, that might explain the restraining order. She explained that, next to the farm was the Golden Horseshoe Horse Club. She would go there to swap meets and horse shows. So one day, when she was driving with her mother on her way to work, she stopped at the Golden Horseshoe driveway (right next to Tim's trailer on the farm) to write down the horse show dates on the sign. Tim was in his vehicle; he confronted her, asked her what she was doing there, and did not believe her explanation. Because he thought she was going onto his property, he went to the courthouse and got a restraining order placed on her. After that, she said, she made no more attempts to go on the property. Sandra insisted that she did not know why he was angry. She said she never took anything of his. She also testified that he never discussed with her any of the money issues he now claims: money he thought she had taken from his checking account and money he said she owed him for a child's braces.

On cross examination, Sandra testified that she and Tim together acquired ten horses, and that they agreed, after she left, that she would have six, and the horse tack and saddles, and he would keep four. She did get the horses and equipment. They also agreed on how to divide up other property: He kept the mobile recreational vehicle for camping, and she got the horse trailer, a 1978 Ford truck, and the 1985 Ford Tempo. Sandra conceded that, to some extent, there was an agreement that she could take some of the stuff and that she did, in fact, take it.

Sandra also agreed that, in 2002, Tim put her and her children on his health insurance. She was not sure whether he filed a tax return naming them as dependents. Nor did she know whether Tim was assessed \$2,400 in taxes because she had filed a separate individual tax return. She simply stated that her tax preparer told her what to do. Sandra acknowledged that, by 2002, Tim had already had one or two heart attacks (she insisted they were "heart episodes") and was on medication, as a result.

Sandra Furlong's son, co-plaintiff Nathan Furlong, then testified. Now 22 years old, he works in Morris, Illinois as an operations manager for NBM Security Systems. He testified that he, his mother and sister lived with Tim O'Brien for six years on the farm, from the time he was 15. He had no personal knowledge about

the arrangements made for purchasing the farm. However, he remembered that Tim stopped by his grandma's house, perhaps in 1996, he thought, and talked about purchasing the farm and having a wonderful life settled on the farm as a family.

Nathan testified that they lived at his grandma's house for three years before moving to the farm. He was not sure which years were involved. While he was living with his grandma, he went to the farm and mowed the grass, cut up trees, cleared the woods, and made a spot for the horses. He said he did this manual labor when he was 15 or 16 until he was 18 or 19. During those years, he spent more than 40 hours a week working on the farm, he stated. At the time, he was attending middle school, and he said he got his homework done. He testified that he put himself into the work on the farm because he was going to be there the rest of his life. He said they all worked there – his mother, sister, brother, even his grandma.

Nathan could not remember exactly when his family left the farm, but agreed it probably was in the fall of 2003. He testified that they all had to leave. He said he left behind a lawn mower that his father had purchased and a wood-burning stove. However, his father came back to the farm with him, and they got the riding lawn mower and his other stuff, including his grandfather's tools, some weights, and a gas can. He said he came back at least twice to retrieve things. He had no knowledge if any items were sold or destroyed, and no knowledge of the value of any items that were not retrieved.

Mary Kwilin, the mother of plaintiff Sandra Furlong, testified next. She said that Tim O'Brien had been a friend of the family for 30 years or more. Tim and Sandy bought the farm in 1995 or 1996, she said. She was present during their conversations regarding the purchase of the farm, and she remembered that Sandy was going to put up some of the money, she thought \$3,000, toward the initial purchase. Then Sandy, her children, and Tim lived on the property. Mary said she would go to the farm a couple of times a month and help paint the trailer or fix the place up. Tim was working at his job then, so he wasn't around, she stated.

Tim and Sandy broke up probably in 2002, Mary reported. A couple of weeks afterwards, Tim telephoned her, asking if he could talk to her about maybe getting back together with Sandy. She knew that he

had put up a no-trespassing sign a few weeks after Sandy had left. So she talked to him. She asked him if he had burned an antique trunk that she had given Sandy. He said he did not know that Mary had given a trunk to Sandy. When she told him that it wasn't right what he did, he got angry. He has not been friendly since, she said. She did not know the value of the trunk, but knew it was really old. She knew that there other things that Sandy was going to put in the house, like an antique rocker and a dresser.

Nicole Caroline Furlong, daughter of the plaintiff Sandra Furlong, testified that she is now 21 and lives in Knox, Indiana. She stated that Tim O'Brien used to be like a father to her. She and her mother and brother lived with him four years, while she was in high school. She said that Tim wanted them to live together as a family. She worked on the farm, keeping the horses, mowing the lawn, fixing fences, and painting.

Nicole knew that an old changing table had been left on the farm. It was used when she was a baby, and she would have used it for her own children, if she had gotten it. She thought it was burned. She testified that her mother had a passion for old stuff, like her rocking chair and the round pen for horses. Nicole said that they got most of the stuff out of the house and mobile home when they moved out. At that time she was 17; she testified that she didn't want to leave. She remembered crying and talking to Tim, trying to keep them together as a family, but Tim had said they had to leave.

She testified that it took a while to get their stuff out of the house. They came back to the farm more than three times, taking many loads. However, a week or so later, when she and her mother came back to get items in the barn, Tim came out of the house and said he'd call the police. He was upset; he told them to leave. They did get the divider for the horse trailer before they left, however. Nicole thought maybe he was standing there with a gun by the door. When asked whether she saw a gun in his hand, she said he might have had the gun by the door. She said Tim never gave them a reason for not being able to get to the items in the barn. She did notice a burn pile by the barn. She said there were several piles to be burned around the property, but this particular one was full.

Nicole testified that, while she was living at the farm, Tim gave her money when she asked for it. She also admitted that, when Tim ordered her mother to leave, she and Nathan asked if they could stay with Tim. Tim said that all of them had to go.

At the end of Nicole's testimony, the plaintiff rested.

The defendant Timothy Lee O'Brien was called to the stand. He said that he no longer lives on the farm; he now lives with his sister, because of his many medical conditions. He first responded to several charges that arose from Sandra's testimony. Tim testified that he did not burn any personal property after Sandra left, but he might have sold some items and thrown out others. He mentioned two specific items that Sandra claimed to be hers: First, the antique trunk was "garbage," he said. Its top did not fit, and he threw it out. As for the round pen, Tim stated that both he and Sandra purchased it. However, he would not let her take it until she paid him for (a) the back taxes he was charged for covering Sandra and her children on his medical insurance during the two years they lived with him, (b) the money she took from his checking account, and (c) the bills he paid for her children's braces.

Tim said he held a personal checking account at First Source Bank. He had told Sandra not to touch it. He presented photocopies of five checks that Sandra had signed with his name.² *See* Def. Ex. 4. He testified that she forged his signature.

Tim also testified that Sandra got more than half the assets on the farm. He submitted a handwritten list of the property she removed from the farm when they broke up: 6 horses (Tim paid for 5 of them), horse tack equipment (saddles, buggy harness, etc.), 1985 Ford Tempo automobile, a 4-horse trailer, groceries taken from the house, and tools and other equipment taken. *See* Def. Ex. 5. He stated that the fair market value of the items was \$9,320. *See id.* He noted on the exhibit that Sandra and Nathan took two trailer loads of their possessions

² The checks signed by Sandra were written on September 26, 2003; September 29, 2003; and October 2, 2003. They were in the amounts of \$430.00, \$235.00, \$35.00, \$8.45, and \$112.04. Although it is difficult to read the names of the payees, it appears that the check for \$430.00 was written to Sandra Furlong and the check for \$35.00 was written to Mary Kwilin, Sandra's mother. *See* Def. Ex. 4.

and that they took the other items they owned at a later time. According to Tim, “the remaining items that they left they stated were garbage and they had no interest in.” *Id.*

Sandra had prepared a two-page list of personal items she left at the farm, with values taken from antique shops. *See* Def. Ex. 6. Sandra’s valuations are written on the right side of the document; Tim added his own valuations on the left side of the pages. Tim testified concerning each item on the list. A sample of the items, with Tim’s value (if he provided one) and then Sandra’s value, are listed below:

1. oak church pew, a gift to Sandra and Tim, is in the barn. (\$25, \$300)
2. gas wood-burning stove of Sandra’s is there. (no value, \$250)
3. space heater he gave her is in the barn. (no value, \$350)
4. two antique rockers are not at the farm; they were not burned, sold or given away, he said. Sandra listed their value as \$325 and \$285.
5. changing table is not in the barn, he said; he thought they took it with them. Her value, \$275.
6. white wood table is in the barn. Her value, \$175.
7. black milk can is in the barn. Her value, \$75.
8. redwood table is in the yard of Sandra’s sister now. Her value, \$125.
9. black iron trellis was gone a year before Sandra left, Tim testified. Her value, \$165.
10. dog house, a gift from Sandra’s sister to Tim, is still at the farm, he testified. Sandra had written that her sister let them borrow it for their dog. Her value, \$85.
11. two trunks, Sandra took them when she left, Tim testified. Her value, \$135 and \$185.

Def. Ex. 6. The list also included antique knick-knacks, a picnic table in the woods that had rotted, bricks dug up from downtown Knox when streets were paved, 16 rubber mats (she took 8, he kept 8), a walking stick Sandra found in the woods, a tool bench Sandra found in a house she was cleaning, and a busted up Schwinn bike. Tim testified that he believed only the trellis and rubber mats were purchased with “real money.” He estimated that all of the items on the first page of Exhibit 6 were perhaps worth \$200-300. He then stated that he did not want any of it and that Sandra could have whatever was still there on the farm. But, he commented, he would like a good faith attempt for her to pay him what she owes him.

Tim then discussed each item on page 2 of Defendant’s Exhibit 6 – rusted watering cans, a brass chandelier; two deep freezers that they kept for animal feed; an old washing machine; a computer that was struck by lightning; hogs (that he bought, fed, and cooked for all of them while Sandra and her children still lived there); bowls and utensils; a queen-sized mattress; snapshots (he thought she took whatever she wanted); wood for the

fence (bought with his money, he pointed out); fruit trees; an antique table with folding leaves; and a well pump that they purchased together. Tim submitted photographs of some items, to show the dilapidated state of the property.

Tim turned to the purchase of the farm. He insisted that none of Sandra's money was used to pay for the farm. She did help pay the \$3,000 he owed on a conversion van, he stated. However, he explained to Sandra that he had just gone through a divorce and would not let her put money into shared real estate. He also paid the mortgage, the taxes, the insurance on the real estate and the vehicles, and the vehicle licenses. She paid nothing, he insisted. Tim provided Defendant's Exhibit 7 to prove that he had added the Furlongs to his medical and dental coverage by submitting a "Domestic Partner Affidavit" to the insurance company. He testified that he paid the following expenses for the 2 years that the Furlongs lived at the farm:

- medical and dental insurance coverage, \$2,500
- support for Sandra and children, \$12,000
- expenses of 6 horses (vet bill, feed, etc.), \$14,400
- expenses for auto (insurance, license, fuel), \$3,000
- checks written by Sandra without consent, \$820.50
- extra utility expenses, \$3,600
- entertainment, \$3,600

Def. Ex. 8. The total amount of the expenses he paid, as a ballpark amount, was \$39,920.50, he said.

The defendant stated that, while he and Sandra were together, he earned \$48,000-\$58,000 and she earned \$8,000-\$10,000. When Sandra left, he testified, she took more than half of the value of the things they accumulated together. He explained that he would not let her come back to get the items in the barn because she refused to help pay the orthodontist's bill or the tax assessment. Tim said he met Sandra at her brother's house and told her about the tax levy. He told her he would hold the horse pen until she helped pay the bills. He said she refused. In addition, Sandra took some of his things, he stated. When she and her kids came to retrieve their belongings, the kids took things that did not belong to them – posters, blenders, and food from the refrigerator and cabinets. So he changed the locks and told Sandra to call him before she came. He told her that, if she would pay the money she owed, he would turn the property over to her.

On cross examination, Tim testified that the tax assessment was \$2,400 and that Sandra's debt to him was about \$3,500 in all. Tim also explained that, when Nathan and his father came out to get the lawn mower and tools, Tim asked them to take away some other things, like Sandra's bike. However, Nathan said he didn't want to take any of that garbage.

Plaintiff's counsel, on cross examination, pointed out discrepancies in Tim's testimony concerning the items on Defendant's Exhibit 6. He admitted, for example, that there had been three trunks; Sandra had taken two, and he threw the junky one away. He actually threw away the broken Schwinn bike, too. In addition, he explained that his medical condition would not allow him to care for the horses. Sandra asked to take them, and he agreed. Nevertheless, he insisted that he, not Nathan's father, had paid for the Ford Tempo and the insurance and the gas. At that point, the defense rested.

In rebuttal, Nathan Furlong testified that Tim O'Brien had a checking account at Fifth Third Bank and that Nathan had been authorized by Tim to write checks in Tim's name. Nathan explained that, when Tim was lying on the couch and couldn't get up, he allowed Nathan to sign a check to pay for something. He also stated that the authorization was never revoked; Tim never said that he or his mother could not write the checks. On cross examination, Nathan testified that he was not sure if the Fifth Third bank account was a joint account held by Tim and his mother. He said that he did not always sign the checks and, when he did, Tim would tell him what to do with the check.

Nathan also testified that his father gave him and his mother the 1985 Ford Tempo when they were living with Tim. He said that either his or his mother's name was on the title and that his mother paid the insurance. Concerning the orthodontist's bill, Nathan stated that the dentist filed suit for payment and that his mother went to court about it. He explained that a \$25 wage garnishment now is being withdrawn from his paycheck each week. That was the only orthodontic bill, to his knowledge. Nathan also denied that he removed anything from the farm that was not his own possession.

Nicole Furlong briefly testified, on rebuttal, that they did not take the changing table when they left the farm.

Sandra Furlong was called again to rebut Tim O'Brien's testimony that she wrote unauthorized checks. She stated that Tim did have his own account. After they had lived together perhaps two years, he had given her permission to write out checks and to sign his name. She explained that sometimes when he was lying on the couch, tired or stressed out doing the bills, he would tell her to sign his name. She also stated that Tim never revoked the consent. The last time she wrote a check from the First Source account was in 2002 or 2003, but then they got a joint checking account in the fall of 2003, she testified. She did not recall if he kept his single account open or if she ever wrote a check out of his single account after they opened the joint account.

Sandra explained the circumstances for purchasing each of the ten horses. Then she stated that, after she left, they agreed that Tim would keep four horses and the RV, and she got six horses, the Ford truck and the horse trailer. She said that, even though her income was low, she bought her antiques and other items at swap meets or with credit cards, and sometimes people gave her things as gifts. She insisted that the bricks were not ordinary: They were cobblestones from around the courthouse, and they were worth more than \$1 a piece. She had planned to use them for the front steps of the house they wanted to build.

Sandra also testified that Tim never asked her to pay any income taxes. She did not remember his getting the tax bill and said she did not know about the tax debt before today. She stated that she paid the real estate taxes on the farm in the spring of 2003 and paid \$3,000 of the \$10,000 down payment on the farm. She agreed that Tim had added her and her children onto his health insurance policy in 2002. However, she did not recall whether she had filed a tax return herself and had received a refund of \$4,000. She was asked whether their accountant told them that, as his "significant other," she must not file a single tax return because he must declare her and her children as dependents. She replied that the accountant worked it out so that they were on Tim's insurance, and the accountant did Tim's tax return and advised them about taxes. She did not understand anything else.

In surrebuttal, Tim O'Brien testified that he kept his own personal checking account at 1st Source Bank and a joint account with Sandra, when she lived with him. He insisted that the kids were not on the account and that he never gave Nathan or Sandra the authority to sign checks from the First Source account.

Discussion

The plaintiffs alleged that the debtor “did willfully and maliciously injure Sandra’s and Nathan’s property and deprive them of all use thereof” pursuant to § 523(a)(6). Section 523(a)(6) of the Bankruptcy Code excepts from discharge any debt “for willful and malicious injury by the debtor to another entity or the property of another entity.” Exceptions to discharge are construed narrowly. *See Berkson v. Gulevsky (In re Gulevsky)*, 362 F.3d 961, 963 (7th Cir. 2004). The plaintiffs therefore must demonstrate that their claim comes squarely within an exception enumerated in § 523. *See UmbrellaBank, FSB v. Michel (In re Michel)*, 304 B.R. 33, 39 (Bankr. D.N.H. 2004).

To succeed under § 523(a)(6), the plaintiffs were required to demonstrate that the defendant intended to cause harm or that there was a substantial certainty that harm would occur. *See Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S. Ct. 974, 977, 140 L.Ed.2d 90 (1998). The plaintiffs must establish that (1) the defendant owes them a debt resulting from an injury the defendant caused them; (2) the defendant’s actions in causing the injury were willful; and (3) the defendant’s actions in causing the injury were malicious. *See Baker Dev. Corp. v. Mulder (In re Mulder)*, 307 B.R. 637, 641 (Bankr. N.D. Ill. 2004). The term “malicious” has been defined as “in conscious disregard of one’s duties or without just cause or excuse; it does not require ill will or a specific intent to do harm.” *In re Thirtyacre*, 36 F.3d 697, 700 (7th Cir. 1994) (quoting *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir. 1986)). The term “willful” modifies “injury”; therefore, a nondischargeable action under § 523(a)(6) “takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury.” *Geiger*, 523 U.S. at 61, 118 S. Ct. at 977 (concluding that § 523(a)(6) is intended to prevent the discharge of debts incurred as a result of intentional torts). The Supreme Court held that the § 523(a)(6) exception is limited to

conduct associated with intentional torts and that “debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6).” *Id.* at 64, 118 S. Ct. at 978. The plaintiffs must prove each element by a preponderance of the evidence. *See Zygulski v. Daugherty*, 236 B.R. 646, 653 (N.D. Ind. 1999).

The lengthy presentation of the trial testimony demonstrates that the disagreement between Sandra Furlong and Tim O’Brien is essentially a property settlement dispute following a romantic relationship. Because they were not married, however, they do not seek resolution under Indiana law by an action for dissolution of marriage. In this bankruptcy court, the plaintiffs’ § 523(a)(6) action requires them to establish that the defendant owed them a debt resulting from an injury the defendant caused them. The court examines the claim of each plaintiff separately.

Plaintiff Nathan Furlong testified that, when he and his mother and sister were forced to leave the debtor’s farm, he took all his belongings from the house and left behind only the riding lawn mower and a wood-burning stove. He and his father returned to the farm and picked up the lawn mower, his grandfather’s tools, some weights, a gas can, and perhaps other items. He said they came back at least twice to retrieve things. The debtor testified that he asked Nathan to take some other items, like Sandra’s bike, but that Nathan refused and called the remaining property left at the farm “garbage.” The debtor also testified that he paid Nathan and a friend \$20 to move the wood-burning stove into the house; Tim believed the stove was his, not Nathan’s.

The court finds that Nathan retrieved all of his possessions at the farm except the stove. It also finds that Nathan received compensation for the stove and has not demonstrated that the debtor caused him a willful and malicious injury within the meaning of § 523(a)(6). *See, e.g., Casini v. Graustein (In re Casini)*, 307 B.R. 800, 820-21 (Bankr. D. N.J. 2004) (finding that debtor’s failure to return boat to creditor did not rise to level of willful and malicious injury). The court determines, therefore, that the plaintiff Nathan Furlong has failed to establish that the debtor owes him a debt resulting from a willful and malicious injury to Nathan. The court denies the plaintiff Nathan Furlong any relief sought under the Complaint.

Plaintiff Sandra Furlong claims a debt in the specific amount of \$12,418 for the items listed on Defendant's Exhibit 6. The debtor challenges her excessive valuations of those items and her right to retrieve them from his farm. Nevertheless, he testified that he did not want to keep any of the property on Sandra's list; he stated that Sandra could have whatever items were still on the farm as long as she would pay her debt to him – an amount he estimated to be \$3,500. The court observes that the parties settled their property disputes in large part: the horses, vehicles, and personal possessions were allocated and retrieved or kept by each party. The debtor testified without contradiction that Sandra received more than half of the assets collected during the time they lived together. In fact, because of the debtor's poor health, the plaintiff Sandra Furlong now has all the horses. Only this property in the barn was not turned over to the plaintiff. It is property of little or no value to the debtor; indeed, he simply has left it in the barn, it appears. The debtor did not report selling any of the items listed on Defendant's Exhibit 6; he did, however, throw away some that had rusted (watering cans) or died (goose), and he disposed of some items he believed were worthless "garbage."

Because Sandra Furlong brought this complaint against Tim O'Brien, she as the plaintiff has the burden of proving by a preponderance of the evidence that the debtor owes her a debt resulting from an injury he caused her or her property. In addition, she must prove that the debt arose from an intentional injury, for "recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Geiger*, 523 U.S. at 64, 118 S. Ct. at 978. The court finds that she has not met her burden of establishing that a debt existed. Sandra, Nathan and Nicole testified that they were able to take all their possessions from the house, and they were allowed to return numerous times to the farm to pick up other belongings of theirs. The evidence also reflected without contradiction that Sandra received more than half of the assets that Sandra and Tim had accumulated together. In the view of this court, had the parties been able to resolve their differences in an action for dissolution of marriage under Indiana Code § 31-15-7-1ff., an Indiana court would have determined that the property of the parties was divided "in a just and reasonable manner." Ind. Code § 31-15-7-4.

The court notes that the trial testimony demonstrated the sharply divergent views held by Sandra and Tim concerning particular events and the value of the property remaining at the farm. However, Sandra offered no corroborative evidence to support her testimony. For example, Sandra's list of the property she claimed was hers was tendered in evidence by the debtor, not by her. *See* Def. Ex. 6. On that exhibit Sandra proffered valuations of the items, with a note stating that "prices are taken from Antique Shops I checked into," *id.*, but she did not attach any verification of those valuations from particular shops. Moreover, she did not dispute or refute the debtor's written list of the property she received from their division of assets and the fair market value of that property (Def. Ex. 5); the debtor's list of expenses he paid and the fair market value of it (Def. Ex. 8); the debtor's evidence of checks from his personal bank account on which she had signed his name without authorization (Def. Ex. 4); or any other evidence proffered by the debtor.³ Sandra asserted that she contributed to the purchase of the farm by putting \$3,000 toward the down payment; however, she failed to produce such evidence as a cancelled check to verify her claim. The court found that the debtor's testimony, supported by clear corroborative evidence, was more credible and plausible than the plaintiff's unsupported testimony. The court determines, therefore, that the plaintiff did not meet her burden of establishing that the debtor owes her a debt at all, and in particular a debt resulting from an injury the debtor caused her or her property.

The court concludes that the plaintiffs have failed to prove by a preponderance of the evidence that there is any debt that Timothy O'Brien owes to Sandra Furlong and Nathan Furlong "for willful and malicious injury by the debtor to another entity or the property of another entity" pursuant to 11 U.S.C. § 523(a)(6). The debt claimed by the plaintiffs therefore is dischargeable in the debtor's bankruptcy.

³ The court also observes that the debtor submitted an affidavit in response to the plaintiffs' motion for summary judgment in this adversary proceeding. He declared that he alone purchased the real estate in question and paid the down payment; that Sandra Furlong took her own property, along with some of his, and then abandoned the worthless property; and that the plaintiffs "stole approximately \$700 from my checking account and stuck me with an orthodontics bill for her children's braces." R. 25, Affidavit of Timothy Lee O'Brien. Plaintiff Sandra Furlong did not file an affidavit and did not present at trial any evidence to disprove the debtor's sworn statement.

Conclusion

For the reasons set forth in this Memorandum of Decision, the court denies the relief sought by the plaintiffs Sandra Furlong and Nathan Furlong in their Complaint Under 523(c) of the Bankruptcy Code to Determine Dischargeability of a Debt.

SO ORDERED.

/s/ Harry C. Dees, Jr.
HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT