

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
TIMOTHY TERRELL MACK and)	CASE NO. 09-30954 HCD
FREDERICKA ANN MACK,)	CHAPTER 7
DEBTORS.)	
)	
GINNIE V. GRAY,)	
PLAINTIFF,)	
vs.)	PROC. NO. 09-3066
)	
TIMOTHY TERRELL MACK and)	
FREDERICKA ANN MACK,)	
DEFENDANTS.)	

Appearances:

Ginnie V. Gray, pro se plaintiff, 247 Dinehart Avenue, Elkhart, Indiana 46517; and

Timothy Terrell Mack and Fredericka Ann Mack, pro se defendants, 715 Harrison, Elkhart, Indiana 46514, or 822 1/2 Prospect Street, Elkhart, Indiana 46514.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 31, 2010.

Before the court is the Amended Adversary Complaint of plaintiff Ginnie V. Gray (“plaintiff”), asking the court to except a \$6,598.43 debt from the discharge of the chapter 7 debtors Timothy Terrell Mack and Fredericka Ann Mack (“defendants” or “debtors”). After a trial in the matter, held November 3, 2009, at which both parties represented themselves without counsel, the court took the matter under advisement. For the reasons stated below, the court grants the relief sought by the plaintiff and finds that the debt to her is excepted from the debtors’ discharge pursuant to 11 U.S.C. § 523(a)(6).¹

¹ The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

BACKGROUND

In June 2006, the plaintiff and her husband rented a house to the defendants for \$575.00 per month. There was no written agreement; the lease was a periodic tenancy from month to month. The plaintiff's husband managed the rental property until he became ill. His wife, the plaintiff in this adversary proceeding, took over the management of the property during his illness and continued it after his death. The defendants admitted that they fell behind on the rent while the plaintiff's husband was ill and that they owed the plaintiff back rent of \$1,916.67 (not including late charges). The defendants also admitted that, pursuant to two Judgments issued against them in the Elkhart Superior Court Number 5, they were ordered to pay a total of \$6,085.00 plus interest and court costs to the plaintiff.² However, they did not pay her.

On March 12, 2009, the defendants filed a voluntary chapter 7 bankruptcy petition. On May 20, 2009, the plaintiff timely filed a Complaint against them. The Amended Complaint, filed May 28, 2009, was brought pursuant to 11 U.S.C. § 727(a)(4)(A) (for the debtors' acts of perjury in the Elkhart Superior Court), § 727(a)(6)(A) (for the debtors' refusal to obey the orders of the Elkhart Superior Court), and § 523(a)(6) (for the debtors' willful and malicious conduct in damaging the plaintiff's rental property). The defendants' Answer focused only on the landlord-tenant relationship between the parties and on the plaintiff's allegations under § 523(a)(6). In the Answer, the defendants admitted owing the rental debt, admitted the two state court judgments against them, but denied knowingly and fraudulently causing damage or harm to the plaintiff's rental property. At trial, both parties argued solely about the defendants' conduct in relation to the damaged

² On September 11, 2007, the Elkhart Superior Court No. 5 approved the parties' stipulation to a partial summary judgment in the amount of \$1,916.67 in favor of the plaintiff. *See* Pl. Ex. B (Judgment of October 15, 2007, Cause No. 20D05-0707-sc 2896). The court also acknowledged the defendants' agreement to an additional debt of \$4,084.00 owed to the plaintiff, and it ordered payment in that amount, plus interest. *See* Pl. Ex. A (Partial Judgment, Payment and Notification Order of September 11, 2007). The September 11, 2007 Judgment reflected the costs for back rent and for damages to the rental property, the plaintiff explained to this bankruptcy court at trial. On October 15, 2007, the state court found that the plaintiff met her burden of proving that the defendants were still in possession of the rental property on August 10, 2007, and that the documents submitted by the defendants were not signed by the plaintiff's husband, as the defendants had claimed. The state court awarded the plaintiff an additional judgment of \$1,916.00 plus costs. *See* Pl. Ex. B p.2. The total amount owed, pursuant to the state court Judgments, was \$6,085.00 plus interest and court costs. The defendants do not challenge the \$6,598.43 total debt alleged by the plaintiff.

condition of the rental house. The court therefore finds that the claims under § 727 have been waived and that only the § 523(a)(6) claim is before the court.³

At trial on the Amended Complaint, the parties represented themselves without legal counsel. The court allowed each witness to make a sworn statement, to proffer evidence, and to give testimony. It then gave the opposing party the opportunity to question the witness and to object to the evidence and testimony. The court questioned each witness on the evidence presented, as well, in order to make its factual and legal determinations.

The first witness was Ginnie V. Gray, the 67 year-old plaintiff who owned the residential real estate rented by the defendants. She testified that the defendants had occupied the rental house from month to month and that she won a lawsuit against them in the Elkhart Superior Court when they failed to pay her the rent. *See* Pl. Ex. A, “Partial Judgment, Payment and Notification Order” (ordering the defendants to pay \$4,084 in damages); Pl. Ex. B, “Judgment” (ordering the defendants to pay \$1,916 in back rent).

The plaintiff testified that she had gone through a difficult time; first, she had knee replacement surgery, and then her husband passed away. When her husband became sick, she attempted to collect the rent due from the defendants. She stated that she was forced to evict the defendants because they would not pay their overdue rent. She told the court that Mrs. Mack left a note on her door saying that she would get Mrs. Gray arrested for coming to her house and that Mrs. Gray would have to take them to court to get any back rent from them. The Macks then stayed away from the house all day, returning only late at night, and they left a dog in the house. The plaintiff finally had to use the police to get them out of the house, she said.

³ The court notes, as well, that the plaintiff could not have succeeded on her § 727 claims. The false oath or account of § 727(a)(4) must relate to a material fact in, or in connection with, the bankruptcy case, and not the state court proceedings. *See Neary v. McCarthy (In re McCarthy)*, 418 B.R. 745, 752 (Bankr. E.D. Wis. 2009). In addition, the refusal to obey a court order refers to an order of the bankruptcy court rather than a state or other court. *See Fitak v. Yonkee (In re Yonkee)*, __ B.R. __, 2009 WL 3193529 at *4 (Bankr. N.D. Ill. Oct. 5, 2009).

When the plaintiff went into the house right after the defendants were evicted, she found it filthy, with rotten food, animal feces, garbage, and flies. Because the defendants broke off the key in the front door lock, her grandson had to climb in through the back window, she said. She also testified that she herself and her grandson cleaned up the house; they therefore clearly knew what had been done to it. The plaintiff described the condition of the house when she went into it: The defendants had placed a 2 X 4 board across the front door of the rented house and had broken the key off in the front door lock. The defendants also had broken a key in the padlock locking the garage door; had broken the track on which the garage door was raised and lowered; had plugged the drains to the kitchen sink and the toilets; had broken many windows; had cut the electric wires leading inside the house; and left rotting food in the refrigerator and freezer. Mrs. Gray admitted that she did not see the defendants damaging the house but testified that she knew they had done the damage because she had watched the house and went in immediately after the defendants left. The house was never vacant, she insisted.

The plaintiff proffered an album of the photographs she took of the rental home when the defendants left. *See* Pl. Ex. K. The snapshots depicted filthy toilets, stove, and sinks; spoiled food and pots, pans, and plates covered with crusted food in the refrigerator and freezer; a door with a board across it, held by two metal brackets; broken garage windows and house windows; cut wires on the outside wall of the house; a damaged laundry room with a cut washing machine pipe; stains and smoke damage on the walls; a missing staircase railing; and garbage and trash everywhere.

In addition to the photographic evidence, the plaintiff proffered other exhibits. The defendant, Mr. Mack, reviewed the exhibits. He admitted that he owed the judgment sums listed on the two Judgments of the Elkhart Superior Court, Plaintiff's Exhibits A and B, and did not object to those exhibits. Because he had not seen and did not recognize Plaintiff's Exhibit C (an invoice for the transcripts of the Elkhart Court proceedings), the court did not admit Plaintiff's Exhibit C. However, the defendant stated that the plaintiff's other exhibits were true and accurate documents and that he had no objection to their admission. The court

therefore admitted the following exhibits: The calculations of interest on the state court judgment and court costs (Pl. Ex. D); the Chronological Case Summary of the Elkhart Superior Court proceedings (Pl. Ex. E); the Order of Garnishment issued to Burger King, Mrs. Mack's employer (Pl. Ex. F); the Attachment Order for Mrs. Mack (Pl. Ex. G); Civil Notice Verification List (Pl. Ex. H); Transcript of the hearing in the Elkhart Superior Court (Pl. Ex. J); and the photographs of the rental property (Pl. Ex. K). The court refused to admit Plaintiff's Exhibit I, the letter from Tavares J. Browning, the plaintiff's grandson, because he was not present and could not be cross-examined as to the truth of his statements.

On cross examination, Mrs. Mack challenged Mrs. Gray's credibility concerning the condition of the house. She asked the plaintiff how she could sell that house if it really was in such bad condition. Mrs. Gray stated that she cleaned it, but still sold the house for less than it was worth. The defendant then asked her how the defendants were able to cut the wires without cutting holes in the wall, and the plaintiff replied that the wires were cut on the outside of the house and that she had photographs of the cut wires.

Mr. Mack also attempted to demonstrate that Mrs. Gray's testimony lacked credibility. He asked the plaintiff why her husband had not thrown them out, if they were so far behind on the rent. Mrs. Gray responded that her husband wanted to collect the overdue payments but that, when her husband became sick and Mrs. Gray had to ask for the back rent, Mr. Mack demanded that she prove they owed it. She did prove it, she said, with written records of the back rent due.

Mr. Mack then challenged the plaintiff's statement that the police came to the house to evict them. He argued instead that the officer came because Mrs. Gray was harassing his children as they were trying to move their possessions onto the truck. Mrs. Gray emphatically denied the accusation. When Mr. Mack asked, "But didn't my children cuss at you in front of the police?," Mrs. Gray responded that the Macks' daughter had "cussed" at the police officer, not at her. She then reported that the policeman (to whom Mr. Mack referred by the name of Officer Bogart) responded, "I wish you-all could get along better because you never know when God looks down on you and you need each other's help. But you-all gotta

do something about that young lady (the Mack daughter) there, because she's got a terrible mouth." Mr. Mack attacked the plaintiff's testimony on two other matters: He asserted that Mrs. Gray had taken the photographs while the Macks were moving out, without giving them more days to get off the property and to do some cleaning. She denied it. He then insisted that Mrs. Gray had given contradictory statements, first that she went into the house the day after they moved and later that she went in right after they moved. Mrs. Gray responded that she only said that she went in right after they moved, on the same day they moved.

The court asked Mrs. Gray why she thought the Macks would do these acts willfully and maliciously. She responded that she did not understand why they did it. She stated emphatically, however, that they did do those acts, and added, "you've seen the pictures, that's the truth." She repeated her testimony that she had demanded the back rent after her husband had become ill, that Mr. Mack challenged her to prove that the Macks actually owed the overdue rent, that Mrs. Mack wrote Mrs. Gray nasty notes because she did not want to move, and that they then tore up the house.

The plaintiff's granddaughter, Naomi Cataldo, next testified. She is a 28 year-old physical therapist. She testified that her grandmother had sufficient proof of the damages done. She said that people may have the right to live in filth but that the defendants did more: They cut the wires, clogged the drains, broke windows and decreased the value of the property. She testified that she was there with her grandmother during the clean-up and helped to take the photographs while they were in the house. They were malicious and willful activities, she said.

When the court asked her why the defendants conducted themselves that way, she testified that, in her view, they were angry they were being evicted and had to move. She said the malicious damage was done once they received the eviction notice. She acknowledged that a pastor would not usually be a malicious person, but she knew that he did those acts. They were the only ones with keys to the house; in addition, they lived in the house after they were evicted and didn't want to move. She added that her grandmother, a sweet person, had to get the police there to get the Macks out of the house.

On cross examination, Mr. Mack asked the witness whether the neighbors saw him cutting the electric wires outside. She stated that she did not speak to the neighbors. With those two witnesses, the plaintiff rested.

The defendant Timothy Terrell Mack then testified that he is the Senior Pastor of House of Prayer Worldwide Outreach Ministry International, Incorporated. He has been a pastor eight years and has two churches, in Elkhart, Indiana, and in Benton Harbor, Michigan. He is presently in college at the ABS Mennonite Seminary in Elkhart, Indiana. In June 2006, he rented a house from Mr. Gray, who knew the defendant when Mr. Mack was the drummer at the Grays' church. He admitted that he was in default on the June and July 2007 payments and was evicted in July 2007.

The defendant denied that he left rotten food in the refrigerator, and insisted that Mrs. Gray took the photos before they moved out, as they were cleaning the place. However, Mr. Mack admitted that they might have left some food as they were moving because they didn't get the cleaning done. He also conceded that they left garbage in bags in the house because they didn't want to leave the bags outside. But he denied cutting any walls or breaking any keys. When the court asked him who would have broken the keys in the locks, the defendant suggested that "some young men that knew my son said some boys broke into the house" to get the Macks' TVs, X-Box, Play Stations, and other equipment; however, he said, they already had moved to a house they owned in Benton Harbor.

Mr. Mack said he lived part of the time in Benton Harbor and part of the time in Elkhart. He testified that he discovered the damage in the Elkhart house but didn't turn in a police report because "the judge knew who I was, I had been before him before." He denied having a dog and denied the animal feces in the house. He also testified that the only broken window was upstairs and that he never fixed that window because the plastic on it kept out the wind. Mr. Mack said they never used the garage or basement and never cut the electric wires. When the court asked him who cut the electric wires, he asserted that the plaintiff had to prove that he did it. The court then asked who could have had a motive to cut the wires, and the defendant

responded that his sons “got into it with some boys” who even pulled a gun on his sons. After that, he testified, he didn’t know what happened. Mr. Mack then stated that he left the house empty in July and August of 2007 and suggested that the vandalism could have occurred when the house sat vacant.

The defendant then made a final statement. He testified that he is the pastor of a church and has a good name in Elkhart. He also plays drums and is a recording artist. He then asked, rhetorically, why he would write songs after damaging the plaintiff’s property, knowing that she could use that against him and cause his CD sales to decline. He asked why he would continue to be a pastor in Elkhart if he had harmed her property. He told the court that his name was so good that people were offering him another church and a restaurant. He then claimed that he didn’t have time to tear up her property because he had his own house now. Although he stated that they did not tear up the house, at the same time he apologized for the house and said that he tried to come to an arrangement with the plaintiff’s grandson to cover some of the costs. In closing, Mr. Mack insisted that the plaintiff never proved that he tore up the house because he didn’t have a reason to tear up the house.

The second witness for the defense was the other defendant, Fredericka Ann Mack, Timothy’s wife, a 40 year-old woman employed in the fast food industry. She stated that they would never tear up someone’s property on purpose. She pointed out that there was no damage found in the \$130,000 house they had owned in Elkhart and then asked rhetorically why they would damage a \$40,000 house like Mrs. Gray’s. She insisted that they didn’t have money to throw away and that they are people of the cloth who teach people how to treat people.

She addressed various allegations of the plaintiff. The drain was plugged up when they arrived, she said, and Mr. Gray did not send a repairman, so they poured something down the drain to unclog it for a while. She testified that only the one upstairs window was broken and that it was already broken when they arrived; it didn’t bother them, she said. She insisted that they did not break keys in the locks and had

no reason to do so. If the plaintiff did not want the Macks to live in her house, they would have no problem finding a new house, she said.

The plaintiff, on cross examination, asked Mrs. Mack why all the windows in the garage and around the house upstairs were broken, and Mrs. Mack responded that she had no idea. She also stated that they did not use the garage. Each accused the other one of leaving nasty notes. When Mrs. Gray asked why Mrs. Mack occupied two houses at the same time, the defendant responded that she had the freedom to choose to stay in whatever house she liked.

The defendants stated that there were no other witnesses or exhibits. The court announced that the defendants therefore rested their case. It allowed each side to make concluding remarks and then took the case under advisement.

DISCUSSION

The plaintiff's Amended Complaint objects to the discharge of the defendants' debt to the plaintiff under § 523(a)(6) of the Bankruptcy Code. Because the goal of bankruptcy relief is to give a "fresh start" to the debtor, exceptions to discharge are construed narrowly in favor of the debtor. *See Berkson v. Gulevsky (In re Gulevsky)*, 362 F.3d 961, 963 (7th Cir. 2004); *Village of San Jose v. McWilliams*, 284 F.3d 785, 790 (7th Cir. 2002). The burden of proof is on the party seeking to except a debt from discharge to prove each of the elements by a preponderance of the evidence. *See Grogan v. Garner*, 498 U.S. 279, 287, 111 S. Ct. 654, 112 L.Ed.2d 755 (1991) (establishing burden of proof); *see also Baermann v. Ryan (In re Ryan)*, 408 B.R. 143, 155 (Bankr. N.D. Ill. 2009) (setting forth analysis for exceptions to discharge).

Section 523(a)(6) excepts from discharge any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." *See Kawaauhau v. Geiger*, 523 U.S. 57, 118 S. Ct. 974, 140 L.Ed.2d 90 (1998); *see also In re Gulevsky*, 362 F.3d at 963-64; *In re Thirtyacre*, 36 F.3d 697, 700 (7th Cir. 1994). "This provision is intended to prevent the discharge of debts incurred as a result of

intentional torts.” *In re Pickens*, 234 F.3d 1273 at *1 (7th Cir. 2000) (unpub’d). Debts are excepted from discharge under § 523(a)(6) “only if the debtor intended the injury, not merely the act that caused the injury.” *Garoutte v. Damax, Inc.*, 400 B.R. 208, 213 (S.D. Ind. 2009) (citing *Kawaauhau*, 523 U.S. at 61). By a preponderance of the evidence, the plaintiff must establish these elements: “(1) that the debtor intended to and caused an injury to the [creditor or to the] creditor’s property interest; (2) that the debtor’s actions were willful; and (3) that the debtor’s actions were malicious.” *Colemichael Investments, L.L.C. v. Burke (In re Burke)*, 405 B.R. 626, 652 (Bankr. N.D. Ill. 2009).

The plaintiff thus has the burden of proving, by a preponderance of the evidence, that a defendant’s conduct was both willful and malicious. *See Zygulski v. Daugherty*, 236 B.R. 646, 653 (N.D. Ind. 1999). “Willful” means deliberate or intentional. “To be willful the debtor must have intended to cause the plaintiff’s injuries – not simply the acts which led to them.” *Young v. Schmucker (In re Schmucker)*, 376 B.R. 256, 258 (Bankr. N.D. Ind. 2007). Thus, injuries inflicted negligently or recklessly are not encompassed under § 523(a)(6). *See id.* “Malicious” means “in conscious disregard of one’s duties or without just cause or excuse.” *In re Thirtyacre*, 36 F.3d at 700. Since defendants seldom, if ever, admit to acting willfully and maliciously, the court may consider circumstantial evidence that the debtor intended to injure the plaintiff willfully and maliciously. *See Galmore v. Dykstra (In re Galmore)*, 390 B.R. 901, 907 (Bankr. N.D. Ind. 2008).

In this case, the state court found that the defendants did damage to the plaintiff’s rental property, but it did not make a finding that the defendants intended to harm the plaintiff or her property. The plaintiff testified that a threatening letter was left on her door, but it was not proffered as evidence. The plaintiff also testified that the defendants left the premises in a sordid, almost uninhabitable state, with rotten food, trash and garbage. However, the case law makes clear that a failure to maintain rental property, without more, is not enough to support a claim of nondischargeability under § 523(a)(6). *See Cutler v. Lazzara (In re Lazzara)*, 287 B.R. 714, 723-24 (Bankr. N.D. Ill. 2002) (finding that debt from deplorable condition of

marginally habitable rented apartment was still dischargeable under § 523(a)(6)). The bankruptcy courts universally hold that a debt based on negligent, rather than intentional, conduct is dischargeable under § 523(a)(6). *See, e.g., Knowles v. McGuckin (In re McGuckin)*, 418 B.R. 251, 257 (Bankr. N.D. Ohio 2009) (finding that debtor's neglect of duties as tenant was deplorable but dischargeable without evidence of damage caused by debtor's overt acts); *Dains v. Dains (In re Dains)*, 384 B.R. 241, 249-50 (Bankr. W.D. Mo. 2008) (finding that plaintiff failed to provide sufficient evidence that debtor caused the damage or that it was intentional or malicious); *James Cape & Sons Co. v. Bowles (In re Bowles)*, 318 B.R. 129, 146-47 (Bankr. E.D. Wis. 2004) (finding that negligent, even reckless, acts are not enough to prove willful and malicious injury); *Lilledahl v. Kibbee (In re Kibbee)*, 287 B.R. 239, 244 (Bankr. E.D. Mo. 2002) (finding that photos of a house in disrepair were not sufficient evidence to establish that the poor condition was the result of the defendants' intent to injure the plaintiff).

The § 523(a)(6) case law therefore demands that the plaintiff prove something in addition to the defendants' badly maintained rental property, which in this case required the replacement of appliances, windows, and carpet; the removal of trash; the repair of wiring, holes, and surfaces; and an immense cleaning. She must prove that the actions causing those conditions were intentional and malicious rather than negligent or reckless.

The court examined the evidence, heard the testimony, and observed the demeanor of the witnesses; the court considered the manner in which the witnesses testified, their tone and attitude, and whether their testimony related to the question or to other facts in the case. It found that no witness was unbiased.⁴ Nevertheless, the plaintiff's testimony that the defendants owed rent and had agreed to pay both the overdue rent and damages was corroborated by the state court judgments and by the testimony of the defendants themselves. Much of the plaintiff's testimony was supported by the photographs, as well, and

⁴ However, the court found credible Mrs. Gray's testimony that the police officer told the parties to get along with one another. In the view of the court, Officer Bogart had an unbiased, clear understanding of the dispute between the landlord and her tenants, a dispute that had gotten too far out of hand.

by the state court history of the dispute between the parties, as was demonstrated in the plaintiff's documentary evidence. The plaintiff answered the court's questions directly, clearly, and consistently, and the court found her testimony credible. In addition, the cross-examinations of Mr. and Mrs. Mack failed to shake her credibility. Also believable was the testimony of Naomi Cataldo, which buttressed her grandmother's statements.

In contrast, the court found the defendants' testimony less credible. Mr. Mack strongly denied leaving spoiled food in the refrigerator, but then admitted that he did leave some food there because he did not finish cleaning the house. He argued that he, a pastor with a good name and a recording artist who writes songs, would not do such damage because news of that conduct would hurt his reputation and CD sales. However, in his statement to the court he apologized for the condition of the house and said he had negotiated with the plaintiff's grandson about some of the costs. He placed blame for the broken keys and cut wires on unidentified boys who knew his sons and perhaps pulled a gun on them. He also testified that vandals may have torn up the house when they left the house empty in July and August, 2007. However, the Elkhart Superior Court had found, in its Judgment, that the defendants were in possession of the property on August 10, 2007, and it disbelieved the defendants' claim that they left the premises substantially before that date.⁵ *See* Pl. Ex. B, p. 1. The inconsistency of these and other statements made by Mr. Mack caused the court to question his credibility. In addition, Mrs. Mack's tone reflected a hostile demeanor and an unwillingness to respond to the plaintiff's cross-examination; for that reason, the court declined to give much weight to her testimony. The court therefore concluded that the testimony of the plaintiff and her granddaughter were more credible and sensible than the testimony of the defendants, when measured with the photographic and documentary evidence. In short, the court believed the plaintiff's version of the events

⁵ The state court also believed the plaintiff's testimony that the defendants broke off the keys in the locks and disbelieved the defendants' proffered evidence of documents allegedly signed by then-deceased Mr. Gray, on the ground that the signatures on the documents "are dissimilar enough that the court disbelieves the evidence of the defendant." *See* Pl. Ex. B, p. 1.

during the plaintiff's eviction of the defendants from her rental property and of the damages done to the house.

Another point about the defendants' testimony was significant to the court. When asked if they cut the wires or broke the key in the lock, each defendant answered "no," but then challenged the question by asking back, "why would I do that?" Mr. Mack also responded that the plaintiff had to prove that he did those acts. The defendants, it appeared, thought that the plaintiff must provide direct proof that their actions caused the damage and that they intended the damage. They did not recognize that circumstantial evidence of intent is acceptable proof of willful and malicious conduct. *See Martello v. Fowers (In re Fowers)*, 360 B.R. 888, 900 (Bankr. N.D. Ind. 2007) (stating that the "'willful' element depends upon the defendant's/debtor's *subjective* state of mind, and that this state of mind must be established at least by circumstantial evidence"); *see also Casella Waste Mgmt. v. Romano (In re Romano)*, 385 B.R. 12, 30 (Bankr. D. Mass. 2008) ("When determining whether the debtor's conduct was willful, '[i]n addition to what a debtor may admit to knowing, the bankruptcy court may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action.") (quoting *Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1106 (9th Cir.), *cert. denied*, 545 U.S. 1139 (2005)).

In this case, the plaintiff presented evidence that the defendants left the rental house in a filthy, deplorable condition. Much of the testimony and photographic evidence demonstrated negligent and even reckless acts of failing to maintain the rental house. *See In re McGuckin*, 418 B.R. at 256-57 (discerning only serious neglect); *Leneski v. Smith (In re Smith)*, 2007 WL 4510309 at *6 (Bankr. N.D. W.Va. Dec. 18, 2007) (unpub'd) (finding that sordid condition of rental premises was caused by debtor's reckless conduct but was not willful, malicious destruction of the property). Unlike the facts in those cases, however, in this case the court found meaningful evidence of damage caused by overt acts on the part of the defendants to cause harm. In the view of the court, the cut electric wires and many broken windows were certainly not the type of ordinary damage that a landlord should expect following an eviction proceeding. The defendants'

suggestion that vandals could have caused that exterior damage is plausible, except for the fact that the house was never vacant; had the defendants been “innocent” of the damage, they would have known that electric wires had been cut. The court finds completely credible the plaintiff’s testimony that she entered the rental house as soon as the defendants left it. Thus the circumstances found in *In re McGuckin*, in which the plaintiff re-entered the rental property five days after the defendant vacated, are not present in this case. See *In re McGuckin*, 418 B.R. at 255. The court has no serious doubt about the access of others to the property; it finds that the defendants were fully responsible for the condition of the house when they vacated it.

The clearest evidence of overt act on the part of the defendants to cause harm was the photograph of the board across the front door. Metal brackets had been mounted on each side of the door frame, and a thick, wide board, probably a 2 X 4, had been positioned through the brackets, so that the door could not be opened. In addition, the broken key in the front door lock barred access through that door. Since Mr. Mack testified that he had only one key and that he did not copy the key without the permission of the owner, he has foreclosed the possibility that vandals or others had keys to the house. Moreover, if the door lock were removed, then the door still could not have been opened, because the board barred its opening. The deliberate, malicious intent to do harm to the property and to frustrate the owner of the property could not be clearer.

The court determines, therefore, that the weight of the circumstantial evidence in this case was sufficient to support an inference that the defendants willfully and maliciously caused damage to the rental property of the plaintiff, as is contemplated for an exception to discharge of the debt under § 523(a)(6). The plaintiff has satisfied her burden of proving that the defendants’ injury to the property was willful and malicious and thus that the total debt in the amount of \$6,598.43 is nondischargeable.

CONCLUSION

For the reasons set forth in this Memorandum of Decision, the relief sought in the Amended Adversary Complaint of the plaintiff Ginnie V. Gray is granted, and the debt owed to the plaintiff by the defendants-debtors Timothy Terrell Mack and Fredericka Ann Mack is excepted from their chapter 7 discharge. Judgment is entered pursuant to 11 U.S.C. § 523(a)(6) against the debtors Timothy Terrell Mack and Fredericka Ann Mack in the amount of \$6,598.43.

SO ORDERED.

/s/ HARRY C. DEES, JR. _____
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT