

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN RE: CASE NO. 13-12295 )  
)  
MATTHEW B. SHAFFER )  
CHRISTY T. SHAFFER )  
)  
Debtors )  
)  
)  
THE ESTATE OF ALISSA GUERNSEY )  
KELLI SPRUNGER )  
)  
Plaintiffs )  
)  
vs. )  
)  
MATTHEW B. SHAFFER )  
CHRISTY T. SHAFFER )  
)  
Defendants )

NOT INTENDED FOR PUBLICATION

PROC. NO. 13-1122

**DECISION AND ORDER**  
**ON MOTION FOR SUMMARY JUDGMENT**

At Fort Wayne, Indiana, on September 5, 2014.

Alissa Guernsey was placed in the care of the defendants, as foster parents or guardians, in mid-December 2008 by the Steuben Circuit Court. On March 28, 2009, at the age of sixteen months, while in the sole care of the defendant Christy Shaffer, Alissa died. A post mortem examination revealed multiple lacerations and contusions, and the cause of death was determined to be blunt force injury of the head. Prior to the bankruptcy, Christy Shaffer pled guilty to and was convicted of neglect of a dependent. Additionally, the plaintiffs were proceeding in state court to obtain a judgment against both defendants for Alissa's wrongful death. At the conclusion of trial, but prior to the court's ruling, the defendants filed for bankruptcy relief thereby staying any ruling. By this proceeding, the court has been asked to declare that any debt resulting from Alissa's death is non-

dischargeable, as a willful and malicious injury and/or defalcation in a fiduciary capacity. See, 11 U.S.C. §§ 523(a)(4), (6). The matter is before the court on the plaintiffs' motion for summary judgment as to Christy Shaffer.

Christy Shaffer is proceeding pro se and has been given appropriate notice of the motion, see, Kincaid v. Vail, 969 F.2d 594, 599 (7th Cir. 1992); Timms v. Frank, 953 F.2d 281, 285-86 (7th Cir. 1992), by the Clerk of this court, see, Notice of Motion for Summary Judgment, dated July 9, 2014, Docket Entry No. 18, and there has been no response within the time required. N.D. Ind. L.B.R. B-7056-1; N.D. Ind. L.B.R. B-7007-1(a). See also, Fed. R. Civ. P. Rule 56(c)(1)(B). Consequently, the court may decide the motion based upon the proposition that “the facts as claimed and supported by admissible evidence . . . exist without controversy . . . .” N.D. Ind. L.B.R. B-7056-1. This does not mean, however, that the motion should be granted merely because it is unopposed. “[T]he party moving for summary judgment has the burden to show that he is entitled to judgment under established principles; and, if he does not discharge that burden, he is not entitled to judgment.” Adickes v. S.H. Kress and Co., 398 U.S. 144, 161, 90 S. Ct. 1598, 1610 (1970). Thus, an unopposed motion cannot be granted automatically. Instead, the court is required to go beyond the lack of opposition and make the further finding that, given the undisputed facts, summary judgment is proper as a matter of law. Weinco, Inc. v. Katahn Associates, Inc., 965 F.2d at 565, 568 (7th Cir. 1992).

To succeed under § 523(a)(6) – willful and malicious injury – a plaintiff must prove an intentional injury, not just an intentional act. Kawauhau v. Geiger, 523 U.S. 57, 61 118 S.Ct. 974, 977 (1998) (“nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury”). See also, Jendus-Nicolai v. Larsen, 677 F.3d 320, 324 (7th Cir. 2012); In re Patch, 526 F.3d 1176, 1180-81 (8th Cir. 2008); In re Staggs, 178 B.R. 767, 774 (Bankr.

N.D. Ind. 1994). The plaintiffs argue that the guilty plea for neglect of a dependent, the coroner's conclusion that Alissa's death was a homicide, and/or Christy's Shaffer's failure to respond to requests for admissions demonstrate that she committed a willful and malicious injury.

As to the first two theories – guilty plea for neglect of a dependent and the coroner's conclusion – the court does not have enough information to conclude that these satisfy the requirements for a willful and malicious injury. While a criminal conviction or guilty plea may provide the basis for a claim of estoppel, the court must be given information as to what the elements of the crime – here neglect of a dependent – are and how those elements satisfy the statutory requirements for a willful and malicious injury. See, In re Busick, 264 B.R. 518, 525 (Bankr. N.D. Ind. 2001). That has not been done. The argument based upon the coroner's conclusion of homicide suffers from the same deficiencies. The court has been given nothing as to what homicide might mean in the context of an autopsy report.

As to the failure to respond to requests for admission the plaintiff is more successful. The plaintiffs served Christy Shaffer with requests for admissions on May 29, 2014. In them, she was asked to admit or deny that:

1. The cause of Alissa's death was blunt force injury of head.
2. That [Christy] struck Alissa in a manner that caused blunt force injury to her person.

Despite having been served with a copy of those requests, she did not respond to them. She did not object to the request; neither did she admit or deny any of the factual statements it contained. As a result, those facts were deemed admitted and, since the court has never been asked to allow the admissions to be withdrawn or amended, have been conclusively established. See, Fed. R. Civ. P. Rule 36(a)(3), (b).

Having considered the motion, together with the materials submitted in support thereof, the court concludes that there is no genuine issue of material fact and plaintiffs are entitled to the entry of judgment in their favor as a matter of law. Christy Shaffer struck Alissa, a sixteen month old child, causing multiple lacerations and contusions and a blunt force injury to her head which resulted in her death. In the absence of any other explanation, the only legitimate inference that can be drawn from these facts is that Christy Shaffer inflicted those injuries “knowing that [s]he had no legal justification and either desiring to inflict the injury or knowing it was highly likely to result from [her] act.” Jendusa-Nicolai, 677 F.3d at 324. See also, Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S.Ct 1348, 1355 (1986) (more than metaphysical doubt is required to defeat summary judgment); Kulak v. City of New York, 88 F.3d 63, 71 (2nd Cir. 1996) (conclusory statements, conjecture, or speculation will not defeat summary judgment); Contemporary Mission v. United States Postal Service, 648 F.2d 97, 107 n.14 (2nd Cir. 1983) (facts in opposition to summary judgment “must be material and of a substantial nature, not fanciful, frivolous, gauzy, spurious, irrelevant, gossamer inferences, conjectural, speculative, nor merely suspicions”). Pursuant to 11 U.S.C. § 523(a)(6), Christy Shaffer’s obligation to the plaintiffs is a non-dischargeable debt.<sup>1</sup>

SO ORDERED.<sup>2</sup>

/s/ Robert E. Grant  
Chief Judge, United States Bankruptcy Court

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<sup>1</sup>Because of its conclusion as to § 523(a)(6), the court need not address the arguments for non-dischargeability under § 523(a)(4).

<sup>2</sup>Since there are multiple defendants, the entry of judgment in this proceeding must await the determination of the claims against the debtor Matthew Shaffer. Fed. R. Civ. P. Rule 54(b). Those claims are scheduled for trial commencing November 17, 2014.