

Mark H.  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

IN RE: JAMES R. ORGAIN, JR.	)	
	)	
WILLIAM T. OAKES, ET. AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. 89-00463-R
	)	
JAMES R. ORGAIN, JR.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

This matter is before the Court on Defendant-Debtor's appeal of an Order of the Bankruptcy Court for the Eastern District of Virginia. Because no party has complied with this Court's Scheduling Order entered October 22, 1990, this Court has conducted a de novo review of the entire record in this Appeal. For the reasons stated below, the Court finds that this appeal is without merit, and the decision of the Bankruptcy Court will be AFFIRMED.

FACTUAL BACKGROUND

This appeal arises from an Order entered by the Bankruptcy Court on July 21, 1989, which decreed that Debtor's debt in the amount of \$7,500.00 to William and Stella Oakes was non-dischargeable under section 523(a)(6) of the Bankruptcy Code. This Order was entered after the Bankruptcy Court conducted a full trial on the merits.

After this Order was entered, Orgain unsuccessfully moved for a retrial. An appeal was then filed with this Court. This Court dismissed the appeal for failure to comply with the Bankruptcy Rules. The Fourth Circuit reversed, holding that dismissal was an overly harsh sanction for untimely filing. This Court reinstated the case on its docket, and now AFFIRMS the decision of the Bankruptcy Court on the merits.

#### DISCUSSION

The Bankruptcy Code, 11 U.S.C. § 523(a)(6), provides that a discharge of debtor does not effect debts "for willful and malicious injury by the debtor to another entity or the property of another entity." The Oakes filed a claim with the Bankruptcy Court seeking to have a debt of \$7,500.00 declared non-dischargeable under this section. The question facing the Bankruptcy Court was whether this debt resulted from willful and malicious injury by the debtor.

At trial, Debtor Orgain failed to appear, although he had been summoned. Apparently, Mr. Orgain suffers from a heart condition which interferes with Court appearances. Nonetheless, Orgain was represented by counsel, who ably presented his position at trial. At the conclusion of the trial, the Bankruptcy Court made several findings of fact. Transcript of Trial, pages 64-65. The Court found that Orgain prepared and recorded a deed which contained libelous statements about the Oakes. The Court also found that Orgain swore out warrants for the Oakes' arrest, after he was

advised by the Commonwealth's Attorney that there was no probable cause for such an action. In light of this legal advice, the Court found that Orgain's conduct was clearly<sup>1</sup> willful and malicious.

The Court also found that Orgain and Oakes had reached a settlement in the libel and malicious prosecution cases, which required Orgain to pay the Oakes \$7,500.00. After hearing evidence that Orgain had engaged in willful and malicious acts against the Oakes, the Bankruptcy Court properly found that this debt was the result of those actions.

On appeal, this Court finds no error in the Bankruptcy Court's factual findings. Indeed, a de novo review of the trial transcript reveals clear and convincing evidence that Orgain willfully and maliciously had the Oakes arrested in retaliation for their refusal to allow Orgain to erect a memorial on their property. The acts of filing the deed and swearing out warrants had no justification and were contemplated to harm the Oakes. They were therefore willful and malicious under § 523(a)(6). See Re Long, 774 F.2d 875 (8th Cir. 1985); Seven Elves, Inc. v. Eskenazi, 704 F.2d 241 (5th Cir. 1983); Re Hazelwood, 43 Bankr. 208 (Bankr. E.D. Va. 1984).

Appellant Orgain's grounds for appeal are difficult to

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<sup>1</sup> While some courts have held that the creditor must show malice by clear and convincing evidence, the Fourth Circuit has recently noted that "the policies of the Bankruptcy Code are best effectuated by requiring that creditors prove by a preponderance of the evidence the willfulness and maliciousness of the debtor's acts under § 523(a)(6) ..." Combs v. Richardson, 838 F.2d 112 (4th Cir. 1988). This holding is not essential here, however, because the record appears sufficient to support the "clear and convincing" standard.

discern. Apparently, he claims that 1) the Bankruptcy Court should not have held the trial when Orgain was in poor health, 2) proof of malice would have been refuted by testimony of Orgain that he acted upon the legal advice of two lawyers, 3) denial of his petition to proceed in forma pauperis was in error. This Court has allowed Orgain to proceed in forma in this appeal, so the third claim is moot.

Letters from Mr. Orgain's physician indicate that Mr. Orgain was told to avoid court appearances in January, 1989. Apparently, Mr. Orgain remains incapable of appearing in court. Under these circumstances, and considering that Orgain was represented by counsel, proceeding to trial on the merits was entirely proper.

Orgain also alleges that he received two letters which advised him to proceed as he did. These letters do not appear in the record, nor did Orgain provide this Court with copies. Moreover, Orgain provides no explanation as to why such letters, if they exist, were not presented at trial. Knowing his own medical condition months before trial, Orgain had a duty to inform his attorney of the relevant facts. There is no showing that this evidence is "newly discovered."

Both parties have a duty to present all relevant evidence at trial. "It would be intolerable to let a party be casual and careless in his preparation for trial, and then after he has lost, grant him a new trial ... " R. Field, B. Kaplan & K. Clermont, Civil Procedure, 635 (5th Ed. 1984). Orgain is not entitled to a new trial in this Court. He has failed to state any valid basis

for his appeal.

CONCLUSION

For these reasons, the July 21, 1989 Order of the Bankruptcy Court, which excepts the debt of James Robert Orgain, Jr., in the amount of \$7,500.00 to William T. Oakes and Stella B. Oakes, from any discharge granted to the debtor, will be AFFIRMED.

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Final Order to the Debtor James Robert Orgain, Jr.; the Plaintiffs, William T. Oakes and Stella B. Oakes; the Clerk of the Bankruptcy Court; and any counsel of record.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

IN RE: JAMES R. ORGAIN, JR. )

WILLIAM T. OAKES, ET. AL., )

Plaintiffs, )

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JAMES R. ORGAIN, JR., )

Defendant. )

C.A. 89-00463-R

FINAL ORDER

This matter is before the Court on Defendant-Debtor's appeal of an Order of the Bankruptcy Court for the Eastern District of Virginia. For the reasons stated in the accompanying Memorandum Opinion, the July 21, 1989 Order of the Bankruptcy Court is hereby  
AFFIRMED.

It is so ORDERED.

Let the Clerk send a copy of this Final Order and the accompanying Memorandum Opinion to the Debtor James Robert Orgain, Jr.; the Plaintiffs, William T. Oakes and Stella B. Oakes; the Clerk of the Bankruptcy Court; and any counsel of record.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE