

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:)	Case No. 10-bk-3626-JAF
WILLIAM P. NICHOLS, JR.,)	
Debtor.)	

ADRIAN CUMMINGS, as personal representative
of the Estate of NANCY L. CUMMINGS
and HOLLY M. CUMMINGS,

Plaintiff,

v.

WILLIAM P. NICHOLS, JR.,

Defendant.

Adv. No. 3:10-ap-260-JAF

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

This proceeding came before the Court upon Motion for Summary Judgment filed by Defendant (the “Motion”) and Plaintiff’s Response to Defendant’s Motion for Summary Judgment (the “Response”). Upon review of the Motion and the Response, the Court finds it appropriate to deny the Motion.

Undisputed Facts

The following facts are undisputed. On November 26, 2004 Plaintiff’s wife and daughter were killed in an automobile accident resulting from Defendant’s negligence. (Ex. D, Mot. for Summ. J.) As a result, Defendant was charged in the Circuit Court for Marion County Florida with two counts of DUI Manslaughter, two counts of Vehicular

Homicide, DUI Impairment, and DUI Impairment Property Damage. (Aff. in Supp. Mot. for Summ. J.) Defendant was acquitted by a jury on the DUI Manslaughter counts. (Id.) The court dismissed the Vehicular Homicide counts. (Id.) The state of Florida announced a Nolle Prosequi as to the DUI Impairment and DUI Impairment Property Damage charges. (Id.)

Thereafter, Plaintiff, as personal representative of the estates of his deceased wife and daughter, sued Defendant for wrongful death in the Circuit Court for Marion County Florida (the “Civil Case”). (Ex. D, Mot. for Summ. J.) The Second Amended Complaint in the Civil Case alleged that the deaths of Plaintiff’s wife and daughter were caused by Defendant’s unlawful operation of a motor vehicle while he was intoxicated from using alcohol, a drug or another substance. (Ex. E, Mot. for Summ. J.) Plaintiff sought compensatory and punitive damages. (Id.) At the commencement of the trial in the Civil Case Plaintiff waived his right to seek punitive damages. (Ex. C, Mot. for Summ. J.) In doing so, Plaintiff withdrew any allegation regarding drunk driving or driving while intoxicated. (Id.) Based upon that representation, “Defendant ... acknowledg[ed] and agree[d] that his negligence was the sole cause of the deaths of [Plaintiff’s wife and daughter]....” (Ex. D, Mot. for Summ. J.) The court stated: “they [are] not pursuing their punitive damage claim on behalf of either estate and based upon the admission of liability for the accident, for the deaths, that the issue of alcohol is no longer relevant to the case. So we’re not going to have any discussions about that. That’s not going to come into evidence.” (Ex. C, Mot. for Summ. J.) Defendant waived any defenses, including affirmative defenses. (Ex. D, Mot. for Summ. J.) Defendant also waived his right to a jury trial. (Id.) The sole issue at trial was the amount of damages resulting from

Defendant's admitted negligence. (Ex. C, Mot. for Summ. J.) On January 22, 2010 the court in the Civil Case entered a judgment again Defendant in the amount of \$3,068,048.21 (the "Judgment"). (Ex. D, Mot. for Summ. J.) The Judgment was for "certain statutory damages under the Wrongful Death Act, see § 768.21, Fla. Stat., [which] were proximately caused by this Defendant's admitted negligence and fault." (Id.)

Plaintiff filed this adversary proceeding seeking a determination that Defendant's debt to him (as set forth in the Judgment) is excepted from Defendant's discharge pursuant to 11 U.S.C. § 523(a)(9). Section 523(a)(9) provides that a debt which is "for death or personal injury caused by the debtor's operation of a motor vehicle, vessel or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;" is non-dischargeable.

Summary Judgment Standard

Federal Rule of Civil Procedure 56 is applicable to bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure 7056. Granting summary judgment is appropriate if, based upon the materials in the record, "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a), 56(c) (2010). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

The non-moving party, after a movant makes a properly supported summary judgment motion, must establish specific facts showing the existence of a genuine issue of fact for trial. FED. R. CIV. P. 56(c). The non-moving party may not rely on the

allegations or denials in its pleadings to establish a genuine issue of fact, but must come forward with an affirmative showing of evidence. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). A court determining entitlement to summary judgment must view all evidence and make reasonable inferences in favor of the party opposing the motion. Haves v. City of Miami, 52 F.3d 918, 921 (11th Cir. 1995). “When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

Application to the Instant Case

Defendant filed the Motion for Summary Judgment asserting that under the principles of res judicata and the Rooker-Feldman doctrine, Plaintiff is barred in this proceeding from seeking a determination that the Judgment is a debt resulting from drunk driving or driving while intoxicated. Defendant points out that if he had not filed a bankruptcy case, Plaintiff would not have had a right to amend the complaint in the Civil Case or to file a separate civil suit, seeking a determination that he is owed damages as a result of Defendant’s drunk driving or driving while intoxicated.

Claim Preclusion-Res Judicata

Claim preclusion, also known as res judicata, prevents parties to an action from re-litigating matters that were or could have been litigated in an earlier suit. Shurick v. Boeing Co., 623 F.3d 1114, 1116 (11th Cir. 2010). “Res judicata prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding.” Brown v. Felsen, 442 U.S. 127, 131 (1979). “Thus matters that arise from the same facts,

occurrences or transactions that were the basis of a prior action may be within the scope of claim preclusion by that action.” 18 J. Moore, et al., *Moore’s Federal Practice* § 131.10[3][c], p. 131-19 (3d ed. 2011).

However, res judicata does not apply to non-dischargeability actions in bankruptcy proceedings. Brown, 442 U.S. at 133. In Brown the creditor obtained a state court judgment against the debtor. Id. at 128. While the creditor’s state court claim against the debtor alleged fraud, the judgment, and the stipulation upon which it was based, did not mention fraud. Id. Shortly thereafter, the judgment debtor filed bankruptcy. Id. The creditor sought to have his debt excepted from the debtor’s discharge pursuant to certain provisions in §17 of the Bankruptcy Act, the predecessor to § 523 of the Bankruptcy Code, which dealt with fraud. Id. at 129. The debtor moved for summary judgment, contending that the questions raised in the bankruptcy proceeding, or similar issues of state law, could have been considered in the state court proceeding and that res judicata therefore barred the creditor’s claims. Id. at 134. The debtor argued that the state court was the proper forum to resolve all debtor-creditor disputes, including those concerning dischargeability. Id. at 134. The Court noted that the creditor did not dispute the validity of the prior judgment but only sought to “meet ...the new defense of bankruptcy which [the debtor] has interposed between [the creditor] and the sum determined to be due to him [The creditor] has upset the repose that would justify treating the prior state-court proceeding as final, and it would hardly promote confidence in judgments to prevent petitioner from meeting respondent’s new initiative.” Id. at 133. The Court stated that even if an issue similar to the issues under § 17 were to arise in state court the state law concept would likely differ from the federal statute. Id. at 135.

Additionally, the Court stated that applying res judicata to the ordinary collection suit in state court would “force an otherwise unwilling party to try § 17 questions to the hilt in order to protect himself against the mere possibility that a debtor might take bankruptcy in the future.” Id. at 135. The Court rejected the application of res judicata, holding that the bankruptcy court was not limited to a review of the judgment and record in the state court proceedings in determining whether the debt was dischargeable. Id. at 138-139. The Court found that applying res judicata would “take § 17 issues out of bankruptcy courts well suited to adjudicate them, and force those issues onto state courts concerned with other matters, all for the sake of a repose the bankrupt has long since abandoned.” Id. at 139.

While Brown dealt specifically with provisions under § 17 over which a bankruptcy court has exclusive jurisdiction, res judicata does not bar non-dischargeability claims over which a bankruptcy court does not have exclusive jurisdiction. In re Graham, 973 F.2d 1089, 1096 (3d Cir. 1992) (affirming bankruptcy court’s refusal to apply res judicata in adversary proceeding to determine dischargeability of taxes pursuant to § 523(a)(1)(C)); In re Burrell-Richardson, 356 B.R. 797, 804 (1st Cir. B.A.P. 2006)(holding that res judicata did not preclude bankruptcy court from determining that state court judgment for defaulted student loan did not cause debt to lose its § 523(a)(8) status). “When a debtor seeks discharge in bankruptcy his claim to that remedy is the claim at issue and fraud by the debtor is one of several potential defenses or objections to the bankruptcy court's grant of relief to the debtor. The claim is the debtor's right to discharge, not the creditor's objection, based on fraud, to discharge.” Graham, 973 F.2d

at 1096. Res judicata does not preclude the Court from determining whether the Judgment is for a debt set forth in § 523(a)(9).

Rooker-Feldman Doctrine

“The Rooker Feldman doctrine places limits on the subject matter jurisdiction of federal district courts and courts of appeal over certain matters related to previous state court litigation.” Goodman v. Sipos, 259 F.3d 1327, 1332 (11th Cir. 2001) citing Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476-82 (1983). According to the Rooker-Feldman doctrine, “a United States District Court has no authority to review final judgments of a state court in judicial proceedings. Review of such judgments may be had only in [the United States Supreme Court].” Powell v. Powell, 80 F.3d 464, 466 (11th Cir. 1996) (quoting Feldman, 460 U.S. at 482). The doctrine applies when: “(1) the party in federal court is the same as the party in state court; (2) the prior state-court ruling was a final or conclusive judgment on the merits; (3) the party seeking relief in federal court had a reasonable opportunity to raise its federal claims in the state-court proceeding; and (4) the issue before the federal court was either adjudicated by the state court or was inextricably intertwined with the state court's judgment.” Morris v. Wroble, 206 Fed. App'x 915, 918 (11th Cir. 2006). “[A] federal claim is inextricably intertwined with [a] state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25 (1987) (Marshall, J., concurring).

Because Plaintiff dropped all allegations concerning alcohol, the issue of Defendant's intoxication was not adjudicated in the Civil Case. Specifically, the court

stated: “they [are] not pursuing their punitive damage claim on behalf of either estate and based upon the admission of liability for the accident, for the deaths, that the issue of alcohol is no longer relevant to the case. So we’re not going to have any discussions about that. That’s not going to come into evidence.” (Ex. C., Mot. for Summ. J.) The Judgment stated “Defendant ... acknowledg[ed] and agree[d] that his negligence was the sole cause of the deaths of [Plaintiff’s wife and daughter].... As such, the only issue left to be presented in this civil trial was damages, namely whether the Plaintiff would meet his evidentiary burden of proof to establish that certain statutory damages under the Wrongful Death Act, see § 768.21, Fla. Stat., were proximately caused by this Defendant’s admitted negligence and fault.” (Ex. D, Mot. for Summ. J.) Additionally, the issue before the Court is not inextricably intertwined with the Judgment. A finding by this Court that the damages embodied by the Judgment were caused by Defendant’s unlawful operation of a motor vehicle because he was intoxicated from using alcohol, a drug, or another substance would not conflict with the Judgment, which was based solely on Defendant’s admitted ordinary negligence and did not consider Defendant’s intoxication.

Issue Preclusion-Collateral Estoppel

While the Motion also refers to issue preclusion, it appears that such reference was a mistaken reference to res judicata. Specifically, the Motion states “[u]nder the principles of issue preclusion, **res judicata**, and the **Rooker-Feldman Doctrine**, Plaintiff is not entitled to seek a determination in this proceeding that the Judgment is a debt resulting from drunk driving or driving while intoxicated.” (emphasis in original). To the extent that Defendant argues that issue preclusion bars Plaintiff from seeking a

determination that the Judgment is non-dischargeable under § 523(a)(9), the Court rejects that argument. “Under the doctrine of issue preclusion, or collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party (or privy) to the prior litigation.” 18 J. Moore, et al., Moore’s Federal Practice § 132.01[1], p. 132-10 (3d ed. 2011). Collateral estoppel principles apply to dischargeability proceedings. Grogan v. Garner, 498 U.S. 279, 285 n.11 (1991). In determining whether to give collateral estoppel effect to a state court judgment, a bankruptcy court must apply that state’s law of collateral estoppel. In re St. Laurent, 991 F.2d 672, 676 (11th Cir. 1993). Under Florida law the following elements must be established in order for collateral estoppel to be invoked: (1) the issue at stake must be identical to the one decided in the prior litigation; (2) the issue must have been actually litigated in the prior proceeding; (3) the prior determination of the issue must have been a critical and necessary part of the judgment in that earlier decision; and (4) the standard of proof in the prior action must have been at least as stringent as the standard of proof in the later case. Id. at 675. As the Court previously discussed, the issue in this adversary proceeding was not actually litigated in the Civil Case. Accordingly, collateral estoppel does not apply. Upon the foregoing, it is

ORDERED:

Defendant’s Motion for Summary Judgment is denied.

DATED this 30 day of September, 2011 in Jacksonville, Florida.

/s/

Jerry A. Funk
United States Bankruptcy Judge

Copies Furnished To:

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