

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

DONNA RAE KRUPKE
Debtor.

Bankruptcy No. 86-02545S

VALERIE A. ANDREWS
Plaintiff

Adversary No. 87-0025S

vs.

DONNA RAE KRUPKE
Defendant.

MEMORANDUM OF DECISION AND ORDER RE: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter is before the court on the plaintiff's motion for summary judgment. The motion was resisted. Oral argument was held on March 23, 1988. The court now issues the following findings of fact and conclusions of law based on the plaintiff's motion, the defendant's resistance, the exhibits introduced into evidence at the hearing on the motion, the admission of the defendant, and the arguments of counsel. This is a core proceeding under 28 U.S.C. 157(b)(2)(I).

FINDINGS OF FACT

The court finds that the following facts are undisputed:

1. Defendant, Donna Rae Krupke, filed her individual voluntary petition under Chapter 7 of the Bankruptcy Code on November 13, 1986.
2. On May 23, 1986, the Hon. Michael S. Walsh, a Judge of Iowa's Third Judicial District, executed a "default judgment re: damages" in favor of Valerie Andrews (ANDREWS) and against Donna Rae Krupke (KRUPKE), in Law No. 94096C then pending in the Iowa District Court for Woodbury County.
3. The judgment was executed as a result of a May 13, 1986 hearing on damages. Default of record had already been entered Against Krupke by the Iowa District Court Clerk on May 9, 1986, for failure to appear after service of the petition and original notice.
4. The judgment was entered against Krupke in the amount of \$7,500.00 together with interest at 10% per annum from March 21, 1986.

5. The judgment contained the following paragraph 3:

"3. The Court finds that on April 7, 1984, the Plaintiff was driving her 1980 Chevrolet Citation in an easterly direction on TriView Avenue near the intersection of TriView Avenue and Zenith Drive in Sioux City, Iowa; that at the same time the Defendant Donna Rae Krupke was driving her motor vehicle in a westerly direction on TriView Avenue and negligently drove her vehicle across the center line and into the Plaintiff's lane of traffic and collided with the front of the Plaintiff's vehicle. Donna Rae Krupke admits that she was intoxicated at the time she was driving her vehicle when it collided with the Plaintiff's vehicle." (Emphasis added.)

6. Through counsel, Krupke admits that she was legally intoxicated (a blood alcohol level of .13% or more) at the time of the accident.⁽¹⁾

7. The petition which commenced the state court suit alleged the negligence of Krupke in seven particulars including driving while intoxicated.⁽²⁾

8. There is a genuine dispute as to whether Krupke's intoxication was a proximate cause of the accident.

DISCUSSION

Andrews takes the position that the debt is non-dischargeable under the following exception to discharge, 11 U.S.C. 523(a)(9):

"A discharge under 727 . . . of this title does not discharge an individual debtor from any debt-- . . . (9) to any entity, to the extent that such debt arises from a judgment or consent decree entered in a court of record against the debtor wherein liability was incurred by such debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated under the laws or regulations of any jurisdiction within the United States or its territories wherein such motor vehicle was operated and within which such liability was incurred; . . ."

Andrews argues that there is no genuine dispute as to any material fact and that she is entitled to a determination that her state court judgment is a non-dischargeable debt.

Krupke resists the motion for summary judgment arguing that the material issue which is genuinely disputed is whether her legal intoxication was a proximate cause of the plaintiff's injuries in contradistinction to her condition being unrelated to the cause of the accident.

Judge Walsh's decision did not find "legal intoxication," but rather found that defendant admitted to being intoxicated at the time of the accident. There is no dispute that Krupke was operating her motor vehicle at the time of the accident with a blood alcohol content of .13% or more. This was admitted at the time of the hearing on the motion for summary judgment. This admission is sufficient. General Casualty Company of Wisconsin v. Keating (In re Keating), 80 B.R. 115, 118 (Bankr. Wisc. 1987).

The court, therefore, finds that the defendant, Krupke, was legally intoxicated at the time of the accident.

She argues, however, that there were other conditions or events which were the proximate cause of the accident, particularly her distraught condition at the time of the accident due to emotional problems. In short she argues that she was so upset at the time of the accident that her crying affected her ability to operate the motor vehicle and to see the roadway.

She argues that 11 U.S.C. 523(a)(9) requires a finding of causal connection before the judgment of the state court can be the basis of non-dischargeability, and that the issue of causation must be tried by this court.

There is no dispute that Judge Walsh's decision does not causally link the intoxication to the accident.

This causal link, however, is not necessary to except the indebtedness from discharge under 11 U.S.C. 523(a)(9).

The injuries to Andrews resulted from Krupke's operation of a motor vehicle within the State of Iowa. At the time of the operation of this motor vehicle, Krupke was "legally intoxicated" within the meaning of Iowa law.

As explained by the court in Keating, denial of discharge under 523(a)(9) requires a showing of a legally intoxicated condition at the time of the operation of the motor vehicle and not a showing that the intoxication caused the accident. Id. at 118.

This court agrees with that interpretation of 523(a)(9).

CONCLUSIONS

1. There is no genuine issue as to a material fact.
2. Plaintiff, Andrews, is entitled to judgment as a matter of law.
3. The indebtedness of Krupke to Andrews represented by the judgment in Iowa District Court Case 94096C should be excepted from discharge under 11 U.S.C. 523(a)(9).

ORDER

Plaintiff's Motion for Summary Judgment is sustained. Judgment shall enter that the indebtedness of Donna Rae Krupke to Valerie A. Andrews as represented by the judgment in the Iowa District Court in Case No. 94096C, is excepted from discharge under 11 U.S.C. 523(a)(9).

SO ORDERED ON THIS 4th DAY OF MAY, 1988.

William L. Edmonds
Bankruptcy Judge

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1. At the time of the accident, the following Iowa statute was in force: Iowa Code 321.281

2. (1) A person shall not operate a motor vehicle in this state in either of the following conditions: (a) While under the influence of an alcoholic beverage or other drug or a combination of such substances. (b) While having an alcohol concentration of thirteen hundredths or more (8) In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation. In an action in which a violation by the means described in subsection 1, paragraph "a" of this section is alleged, evidence that the defendant had an alcohol concentration of ten hundredths or more is presumptive evidence that the defendant was under the influence of an alcoholic beverage.