

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.



Dated: September 25, 2024

Beth A. Buchanan

Beth A. Buchanan
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MEMORANDUM OPINION GRANTING PLAINTIFF JOSHUA LOOBY'S MOTION FOR PARTIAL SUMMARY JUDGMENT, AS AMENDED [Docket Number 58 and 59]

[This opinion is not intended for publication or citation.]

This matter is before the court on the *Plaintiff Joshua Looby's Motion for Partial Summary Judgment* [Docket Number 58], as amended [Docket Number 59]; Defendant's *Response* [Docket Number 65] and *Supplemental Exhibits* [Docket Numbers 68 and 69]; and Plaintiff's *Reply* [Docket Number 66] and *Supplemental Reply* [Docket Number 76].

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334, and the standing General Order of Reference in this District. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

On summary judgment, Plaintiff Joshua Looby (“Mr. Looby”) seeks a determination that a judgment debt owed to him by Defendant-Debtor Yuka Oh (“Ms. Oh”) is excepted from discharge as a matter of law because of the preclusive effect to be given to the state court judgment and award of damages establishing the debt.

After review of the evidence, this Court grants summary judgment to Mr. Looby. The state court judgment in favor of Mr. Looby, based on Georgia’s common law tort of defamation, includes findings meeting the requirements to except the debt from discharge as a willful and malicious injury under 11 U.S.C. § 523(a)(6). Having likewise met the remaining requirements to give the judgment preclusive effect, the judgment debt is excepted from discharge.

I. BACKGROUND

A. The Adversary Proceeding and Return of the Parties to the Georgia State Court

On February 25, 2019, Ms. Oh filed a chapter 7 bankruptcy petition. Subsequently, Mr. Looby filed a complaint against Ms. Oh initiating this adversary proceeding [Docket Number 1] (“Adversary Complaint”). In the Adversary Complaint, Mr. Looby included three state law counts against Ms. Oh, including a claim for defamation, expenses of litigation, and punitive damages, and one count to except the debt from discharge as a “willful and malicious injury” pursuant to 11 U.S.C. § 523(a)(6) [*Id.*].

After Ms. Oh filed her answer, Mr. Looby filed a motion requesting that this Court abstain from hearing the state law counts and grant relief from stay to allow the parties to return to a Georgia state court to litigate those counts in a case filed against Ms. Oh prior to her

bankruptcy filing [Docket Number 14]. Following an unsuccessful mediation, this Court entered an order granting Mr. Looby's request for permissive abstention, granting relief from the automatic stay to allow the parties to return to the state court to litigate the state law claims, and staying litigation in the adversary proceeding pending the outcome in the state court [Docket Number 34] (“Order Granting Relief from Stay”).

B. The Litigation of the State Law Claims in the Georgia Case

The state court case was initiated on March 18, 2018, prior to Ms. Oh's bankruptcy case, with the filing of complaint against Ms. Oh in the Superior Court of Dekalb County, Georgia (“Georgia Superior Court”) styled *Joshua Looby v. Nicki Helen Oh*, Civil Action File No: 18CV3257-8 (the “Georgia Case”) [Docket Number 58, Ex. B, p. 1]. In the Georgia Case, Mr. Looby alleged three causes of action: Count I – Defamation; Count II – Expenses of Litigation and Count III – Punitive Damages. [*Id.*, Ex. C]. Ms. Oh filed an answer in the Georgia Case [*Id.*, Ex. B, p. 1] and participated in discovery [Docket Number 59, Ex. I]. On October 18, 2018, Ms. Oh filed a motion to dismiss the Georgia Case to which Mr. Looby responded in opposition [Docket Number 58, Ex. B, p. 1]. On February 4, 2019, the Georgia Superior Court entered an order denying Ms. Oh's motion to dismiss and setting a final jury trial date for March 18, 2019 [*Id.*]. The trial was then stayed by Ms. Oh's bankruptcy filing.

Following this Court's entry of the Order Granting Relief from Stay, a trial was held in the Georgia Case on July 10, 2023¹ [Docket Number 58, Ex. L, ¶ 5]. Ms. Oh did not appear for the state court trial even though the Georgia Superior Court concluded, in the judgment, that she did receive notice:

Defendant Nicki Helen Oh (“Ms. Oh” or “Defendant”) received notice of the July 10, 2023 trial calendar, as evidenced by her emails to court staff requesting a continuance from the calendar and by her eventually filing a formal motion for

¹ Due to the COVID-19 pandemic, the Georgia Case was delayed significantly.

continuance. Ms. Oh was instructed by Court staff that her motion for continuance would be heard at the July 10, 2023 trial calendar. Ms. Oh did not appear at the call of cases at 9:30, and after a member of the Court's staff informed Ms. Oh by email that her motion for continuance had been denied and that the trial would proceed at 10:30, Ms. Oh still failed to appear.

[Id., Ex. A, p. 1]. The trial went forward and Mr. Looby presented evidence on his claims including evidence of his damages [Id.]²

On July 17, 2023, the Georgia Superior Court entered its *Final Order and Default Judgment* (the “Georgia Judgment”) based on the evidence Mr. Looby presented and Ms. Oh’s default [Id., Ex. A, p.1]. In the Georgia Judgment, the Georgia Superior Court made the following findings:

1. Mr. Looby began working as a member of a camera crew in the Atlanta film industry in 2016. Mr. Looby’s work required him to network and maintain a good reputation in the industry because, at the end of each production he worked on, he would have to get hired for another production to continue his employment.
2. In February of 2018, Ms. Oh defamed Mr. Looby both personally and in reference to his trade and profession by falsely stating that Mr. Looby had sexually harassed her, that Mr. Looby told her there was no money to be made for actors in this market unless they got nude, that Mr. Looby psychologically abused her and made her cry every time she saw him at networking events, and that Mr. Looby was a sociopath.
3. Ms. Oh initially made these statements on a post in a Facebook community called “Film Bar Mondays,” which was an informal group of individuals in the Atlanta Film Industry who would meet on Monday evenings, often at bars. Many people saw Ms. Oh’s statements, and after Ms. Oh defamed him, Mr. Looby was humiliated, embarrassed, ostracized, and held in contempt by others, his personal reputation suffered, and he was not able to find work as a camera crew member in the Atlanta area.
4. In the months leading up to her defamatory statements, Ms. Oh had initiated many conversations with Mr. Looby via Facebook in which Ms. Oh was the one who brought up topics of dating, romantic relationships, and sex.

² When Ms. Oh failed to appear at the trial, Mr. Looby moved to strike her answer which was granted by the Georgia Superior Court.

5. On the day of her defamatory statements, Ms. Oh made at least two statements indicating that she knew Mr. Looby's reputation was very important to him personally, as well as to his continued employment as a camera crew member, and that she knew statements that someone sexually harassed women would damage that person's personal reputation and make that person unemployable in the film industry.

6. The Court specifically finds and holds that the statements Defendant [Ms. Oh] made about Mr. Looby were false and that Defendant made such false statements maliciously and without just cause, justification or excuse.

7. The Court specifically finds and holds that Defendant acted with the specific intent and subjective motive to cause injury to Mr. Looby, including without limitation loss of income and hindrance to his ability to earn a living, humiliation, embarrassment, public hatred, contempt, ridicule, emotional pain, inconvenience, mental anguish, damage to his reputation, and loss of enjoyment of life.

[*Id.*, Ex. A, pp. 2-3]. Based on these findings, the Georgia Superior Court entered judgment in favor of Mr. Looby and against Ms. Oh in the following amounts:

- Specific damages (lost wages and pension benefits and mitigation expenses): \$84,000.00
- General damages (for personal injury to Plaintiff [Mr. Looby]): \$175,000.00
- Attorney's fees and expenses of litigation (from this lawsuit only): \$29,983.41

[*Id.*, Ex. A, p. 3]. Ms. Oh neither requested a new trial nor appealed the Georgia Judgment and it became final on August 17, 2023 [*Id.*, Ex. L, ¶¶ 6-7].

Subsequently, Mr. Looby returned to this Court and filed his motion for partial summary judgment [Docket Number 58] asserting that the findings in the Georgia Judgment were entitled to preclusive effect in this Court and that these findings support that the \$288,983.41 judgment, plus post-judgment interest, should be excepted from discharge as a willful and malicious injury pursuant to 11 U.S.C. § 523(a)(6).

II. SUMMARY JUDGMENT STANDARD

This Court addresses Mr. Looby's motion for partial summary judgment under the standard set forth in Rule 56(a) of the Federal Rules of Civil Procedure (the "Civil Rules") made

applicable to this proceeding by Rule 7056 of the Federal Rules of Bankruptcy Procedure. Civil Rule 56(a) provides that summary judgment is to be granted by this Court “if 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). “As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A “genuine” dispute exists only where “evidence is such that a reasonable [finder of fact] could return a [judgment] for the nonmoving party.” *Id.*; *see also Gallagher v. C.H. Robinson Worldwide, Inc.*, 567 F.3d 263, 270 (6th Cir. 2009).

To prevail, the moving party, if bearing the burden of persuasion at trial, must establish all elements of its claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986). Thereafter, “the nonmoving party must come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citations omitted). All inferences drawn from the underlying facts must be viewed in a light most favorable to the party opposing the motion. *Id.* at 587-88; *Anthony v. BTR Auto. Sealing Sys., Inc.*, 339 F.3d 506, 511 (6th Cir. 2003). Nonetheless, mere conclusory allegations or unsupported opinions of the nonmovant are insufficient to defeat a motion for summary judgment. *Matsushita*, 475 U.S. at 586-88; *See also Blaney v. Cengage Learning, Inc.*, 2011 U.S. Dist. LEXIS 43780, at *19-20, 2011 WL 1532032, at *7 (S.D. Ohio Apr. 22, 2011) (“Although the summary judgment standard requires that evidence of record be viewed in the light most favorable to the nonmoving party, it does not require that all bald assertions and subjective unsupported opinions asserted by the nonmoving party be adopted by the court”).

III. LEGAL ANALYSIS

A. The Georgia Judgment is Entitled to Preclusive Effect

On summary judgment, Mr. Looby argues that the Georgia Judgment should be granted preclusive effect in this dischargeability proceeding and that its findings establish the elements necessary to except the judgment debt from discharge pursuant to 11 U.S.C. § 523(a)(6). Exceptions to discharge are to be narrowly construed in favor of the debtor. *Yeager v. Wilmers*, 553 B.R. 102, 107 (S.D. Ohio 2015). The creditor bears the burden of proving that a debt should be excepted from discharge by the preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 287 (1991); *Yeager*, 553 B.R. at 107.

The United States Supreme Court has concluded that the principle of issue preclusion applies in dischargeability proceedings when facts or legal issues determined in prior litigation are relevant to the elements to except a debt from discharge pursuant to one of the provisions of 11 U.S.C. § 523. *Grogan*, 498 U.S. at 284 n.11; *Clark v. Springhart (In re Springhart)*, 450 B.R. 725, 730 (Bankr. S.D. Ohio 2011). Furthermore, under 28 U.S.C. § 1738, federal courts are directed to give the same “full faith and credit” to a state court judgment as would be given that judgment under the law of the state in which it is rendered. *Bay Area Factors v. Calvert (In re Calvert)*, 105 F.3d 315, 317 (6th Cir. 1997); *Sill v. Sweeney (In re Sweeney)*, 276 B.R. 186, 189 (B.A.P. 6th Cir. 2002). Consequently, in order for a judgment rendered in a Georgia state court to have preclusive effect in a bankruptcy adversary proceeding, it must be entitled to such effect under Georgia’s preclusionary principles. See *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 461 (6th Cir. 1999) (looking to the law in the state in which the issue was litigated to determine if re-litigation of such issue is precluded); *Hebbard v. Camacho (In re Camacho)*, 411 B.R. 496, 501-02 (Bankr. S.D. Ga. 2009) (looking to Georgia law to determine the preclusive

effect to be given to a Georgia state court default judgment for fraud in a bankruptcy nondischargeability proceeding).

Issue preclusion, also called collateral estoppel,³ bars relitigation of an issue previously decided in a judicial proceeding if the party against whom the prior decision is asserted had a full and fair opportunity to litigate that issue in the earlier case. *St. Laurent v. Ambrose (In re St. Laurent)*, 991 F.2d 672, 675 (11th Cir. 1993). Under Georgia law, issue preclusion applies when the following elements are met: (1) there is an identity of parties between the two cases; (2) there is an identity of issues between the two cases; (3) actual and final litigation of the issue in question occurred; (4) the adjudication was essential to the earlier action; and (5) the parties had a full and fair opportunity to litigate the issues in question. *Kasper v. Turnage (In re Turnage)*, 460 B.R. 341, 345 (Bankr. N.D. Ga. 2011); *Lusk v. Williams (In re Williams)*, 282 B.R. 267, 272 (Bankr. N.D. Ga. 2002). This Court reviews each of these elements to determine whether they are met by the Georgia Judgment.

1. Identity of the Parties

The parties do not dispute the fact that the parties to this adversary proceeding, Mr. Looby and Ms. Oh, are identical to the parties to the Georgia Judgment. Consequently, this element is satisfied.

2. Identity of the Issues

In order for issue preclusion to apply, the issues determined in the state court on which preclusive effect is to be afforded must be identical to those necessary to determine the debt excepted from discharge. In this case, Mr. Looby asserts that the determinations by the Georgia

³ Issue preclusion and collateral estoppel refer to the same doctrine. Although the term “collateral estoppel” is preferred by the Georgia courts, this Court will generally refer to the doctrine using the term “issue preclusion” as preferred in this circuit. Regardless of the term used, this Court will be analyzing the elements of the doctrine under Georgia state law.

Superior Court encompass each of the elements necessary for this Court to find that the Georgia Judgment is non-dischargeable debt pursuant to 11 U.S.C. § 523(a)(6).

Section 523(a)(6) excepts from discharge any debt for a “willful and malicious injury by the debtor to another entity or the property of another entity[.]” 11 U.S.C. § 523(a)(6). Although often found concurrently, the terms “willful” and “malicious” are distinct requirements and both must be met for a debt to be nondischargeable. *Yeager*, 553 B.R. at 107. With respect to the willful requirement, the Supreme Court determined that a debtor’s acts must not only be intentional but also be committed with the intent to cause injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61-63 (1998). The Sixth Circuit further clarified the standard by holding that the debtor must be found to have desired to cause the harm or had knowledge that the harm was substantially certain to result. *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 464 (6th Cir. 1999); *Yeager*, 553 B.R. at 107. A court may consider circumstantial evidence in determining what the debtor may actually have known when taking the action that produced the injury. *Yeager*, 553 B.R. at 107.

In addition, a plaintiff must demonstrate that the injury was “malicious,” meaning that it arose out of a conscious disregard of one’s duties or without just cause or excuse. *Id.* It does not require ill-will or specific intent. *Id.*

The findings and legal conclusions in the Georgia Judgment are identical to and meet the requirements for both a “willful” and “malicious” injury pursuant to 11 U.S.C. § 523(a)(6). The Georgia Superior Court specifically found that, in February of 2018, Ms. Oh made defamatory statements about Mr. Looby both personally and professionally by falsely stating, among other things, that Mr. Looby had sexually harassed her, that he psychologically abused her and made her cry at networking events, and that he was a sociopath. These statements were made in a

Facebook community that included individuals in the Atlanta film industry, the profession in which Mr. Looby worked. The Georgia Superior Court concluded that Ms. Oh made the false statements knowing that Mr. Looby's reputation was very important to him personally, as well as to his continued employment as a camera crew member, and that she knew the statements that someone sexually harassed women would damage that person's personal reputation and make that person unemployable in the film industry.

Based on these findings, the Georgia Superior Court determined that Ms. Oh had the subjective desire to cause Mr. Looby harm and that harm resulted from Ms. Oh's false statements in the form of his embarrassment, loss of reputation and ability to find work as a camera crew member in the Atlanta area. These determinations by the Georgia Superior Court are identical to those required for a "willful" injury under § 523(a)(6). In addition, the Georgia Superior Court concluded that the false statements were made by Ms. Oh "maliciously and without just cause, justification or excuse" identical to the malicious component of 11 U.S.C. § 523(a)(6).

Nonetheless, Ms. Oh argues that the Georgia Judgment is insufficient to meet the "identity of issues" requirement for issue preclusion or fails to demonstrate that the issues to which issue preclusion would apply are essential to the adjudication. She argues that, to establish a cause of action for defamation under Georgia law, "a plaintiff must submit evidence of (1) a false and defamatory statement about himself; (2) an unprivileged communication to a third party; (3) fault by the defendant amounting at least to negligence; and (4) special damages or defamatory words 'injurious on their face.'" *Barnwell v. Trivedi*, 881 S.E.2d 16, 20 (Ga. Ct. App. 2022). Ms. Oh argues that because a defamation judgment may be based on mere negligence, a default judgment for defamation is insufficient to establish that a willful and malicious injury

occurred and, thus, the judgment should not be afforded issue preclusive effect.

Because a defamation claim under Georgia law may be based on negligence, a pure default judgment or a verdict for defamation per se lacking specific factual findings may be insufficient to establish that the injury is “willful” as that term is used under § 523(a)(6). *See, e.g., Ali v. Watson (In re Watson)*, Adv. No. 18-69905-BEM, 2019 Bankr. LEXIS 3297, at *14, 2019 WL 5388061, at *6 (Bankr. N.D. Ga. Oct. 18, 2019) (concluding that because slander may be effected negligently, a jury verdict based on slander per se was insufficient to show that the slanderous statements were made with the “actual intent to cause injury” or were “substantially certain to cause injury”). However, Ms. Oh’s argument ignores the fact that the Georgia Judgment at issue in this matter is neither a pure default judgment nor a jury verdict based on defamation per se. Instead, the Georgia Judgment, rendered after an evidentiary trial, includes the Georgia Superior Court’s specific factual findings regarding the circumstances surrounding Ms. Oh’s defamatory statements with the conclusion that they were made “maliciously and without just cause, justification or excuse” and that Ms. Oh had the subjective desire to cause Mr. Looby harm with the statements. These findings are identical to the elements required to prove a willful and malicious injury under § 523(a)(6). *See Moyer v. Anthony (In re Anthony)*, 648 B.R. 556, 574-75 (Bankr. S.D. Ohio 2023) (concluding that even if a state court judgment is possible without the conclusion that the debtor’s conduct is willful, when the state court specifically concludes that the debtor’s conduct is willful and that finding supports the judgment, that finding is entitled to issue preclusive effect). Accordingly, this element is satisfied.

3. Actually and Finally Litigated

The next prong of the issue preclusion analysis is whether there was an actual and final litigation of the issue in question. “Georgia case law does not disclose any analytical framework

for determining whether a matter was actually litigated. However, ‘as a general rule, when a question of fact is put in issue by the pleadings, is submitted to the trier of fact for its determination, and is determined, that question of fact has been ‘actually litigated.’’’ *Dynamite Mktg., LLC v. Dowd (In re Dowd)*, 616 B.R. 212, 222 (Bankr. N.D. Ga. 2020) (quoting *Williams*, 282 B.R. at 272). The “actually litigated” requirement is not addressed to the quality or quantity of the evidence or arguments presented but, instead, “only requires that an issue was effectively raised in the prior action, and that the adverse party had a fair opportunity to contest the issue.” *Walters v. Betts (In re Betts)*, 174 B.R. 636, 646 (Bankr. N.D. Ga. 1994). “An actual trial is not always required if the court is satisfied that the litigants’ rights were fully and fairly protected and a meaningful opportunity to prosecute or defend a case and litigate the issues was provided.” *Id.* Accordingly, even a default judgment is recognized as a judgment on the merits that may be entitled to preclusive effect under Georgia law. *Dowd*, 616 B.R. at 222; *Avatar Indus., LLC v. Innovative Medical Care, Inc. (In re Innovative Medical Care, Inc.)*, 372 B.R. 566, 571 (Bankr. D. Conn. 2007) (holding that a default judgment, under Georgia law, is equivalent to a decision on the merits such that “the lack of litigation does not bar a default judgment from having collateral estoppel effect”).

The Georgia Judgment meets this standard. Ms. Oh was provided opportunity to fully participate and defend her rights in the Georgia Case, an opportunity she took advantage of by actively participating in the case up to the date of trial. Furthermore, unlike a pure default judgment situation, the Georgia Superior Court held a trial of which Ms. Oh had notice and an opportunity to attend. When she failed to appear, the Georgia Superior Court proceeded with the trial at which Mr. Looby presented his evidence. The Georgia Superior Court subsequently entered a judgment including findings of fact and conclusions of law.

Nonetheless, Ms. Oh asserts that the Georgia Judgment fails to reflect her poor mental health which she cites as her reason for failing to attend the trial and which she believes may have impacted her “legal ability” to act willfully or maliciously. She cites her own affidavit to support that she was diagnosed with bipolar disorder, post-traumatic stress disorder and general anxiety disorder, that she suffered from these conditions when she made the defamatory statements, and that her condition was the reason she did not attend the trial [Docket Number 68]. She also points to an affidavit of a professional clinical counselor, Julia Rose, who treated Ms. Oh from April 6, 2023 to September 5, 2023 for “a history of trauma” that, Ms. Oh reported, impeded her daily functioning and needed immediate attention [Docket Number 69].⁴

While Ms. Oh’s assertions regarding her mental health may or may not have provided a defense, any defense Ms. Oh wanted evaluated in the Georgia litigation needed to be presented at the trial. The failure of Ms. Oh to attend the trial or present her asserted defense does not detract from the fact that she had notice of the trial date, she was instructed to attend, the trial went forward at which time evidence was presented, and a judgment was rendered. The circumstances are more than sufficient to meet the “actually litigated” requirement for application of issue preclusion under Georgia law.

Additionally, Ms. Oh points out that Mr. Looby’s counsel drafted the wording of the Georgia Judgment which, she asserts, was written to meet the requirements to except the debt from discharge in bankruptcy. Regardless of the identity of the drafter, the findings and conclusions in the Georgia Judgment were adopted by the Georgia Superior Court when it entered the judgment after being presented with evidence at trial. To the extent she disagreed with the findings in the judgment, or the process by which it was entered, Ms. Oh could have

⁴ The affidavit of professional clinical counselor Julia Rose reflects that she treated Ms. Oh in 2023 but does not provide any specific diagnosis or express a conclusion regarding Ms. Oh’s mental state at the time she made the defamatory statements in 2018 or at the time of the trial.

requested a new trial or filed an appeal. Her failure to avail herself of such opportunities resulted in the judgment becoming final.

With that, this Court concludes that the Georgia Judgment was “actually and finally litigated” which satisfies the final element for application of issue preclusion.

4. Adjudication’s Essentiality

Next, this Court must consider whether the determinations made by the Georgia Superior Court as to the nature of Ms. Oh’s conduct were essential to the state court’s adjudication and judgment. *Kaspar v. Turnage (In re Turnage)*, 460 B.R. 341, 347 (Bankr. N.D. Ga. 2011) (finding where the debtor’s conduct was the basis for the state court’s award of damages, the debtor’s conduct was essential to the state court’s judgment). This typically becomes a concern when a multi-count complaint is involved. *See In re Williams*, 282 B.R. at 274. For example, if a judgment is based on multiple counts without apportionment of liability and damages to each one, and only one count falls within the exception to discharge, it may be impossible to determine what issues were adjudicated and essential to the judgment. *Id.* (discussing *St. Laurent*, 991 F.2d at 676-77). In those circumstances, the judgment may have no preclusive effect. *Id.*

In this instance, the judgment and award of damages were based on one cause of action, defamation, and one set of facts meeting the elements of that cause of action. Accordingly, the findings and issues to which issue preclusion would be applied were essential to the judgment and award of damages.

Ms. Oh, however, reiterates her earlier argument that Georgia law does not require a finding of willful and malicious conduct in order for a defendant to be liable for defamation; rather, mere negligence is sufficient. As such, Ms. Oh maintains that Mr. Looby has made no

showing that the state court essentially concluded that Ms. Oh's actions were made with the intent to harm Mr. Looby. This argument "ignores history." *Anthony*, 648 B.R. at 575. While the Georgia Superior Court could have found Ms. Oh liable for defamation based on negligently uttered defamatory statements, that is not what happened. *Id.* The Georgia Superior Court expressly found that the false statements made by Ms. Oh were made with the specific intent and subjective motive to cause injury to Mr. Looby and that she made these false statements maliciously and without just cause, justification, or excuse. These findings were essential to the determinations made by the Georgia Superior Court in rendering the judgment.

5. Full and Fair Opportunity to Litigate

The final element in the issue preclusion inquiry—a full and fair opportunity to litigate the issues in the prior proceeding—is rooted in due process concerns. *Tenet South Fulton, Inc. v. Demps (In re Demps)*, 506 B.R. 163, 169 (Bankr. N.D. Ga. 2014). “[T]he key to full and fair opportunity analysis is determining whether the party had adequate notice of the issue and was afforded the opportunity to participate in its determination.” *Williams*, 282 B.R. at 277. This prong is satisfied when a party is provided notice and an opportunity to litigate liability and damages at a hearing. *Demps*, 506 B.R. at 170. Furthermore, the fact that a party proceeds in the litigation without counsel does not mean that the party lacked a full and fair opportunity to litigate. *Id.* at 169 (noting that to hold otherwise “would effectively eliminate the doctrine of collateral estoppel in proceedings involving pro se litigants”).

In this instance, Ms. Oh was provided opportunity to fully participate and defend her rights in the Georgia Case, an opportunity she took advantage of by actively participating in the litigation. Ms. Oh filed an answer, participated in discovery, and filed various motions including a motion to dismiss. The Georgia Superior Court provided her with notice of the trial date and

instruction that she must appear. Although Ms. Oh's counsel withdrew prior to the trial,⁵ neither that fact nor her failure to attend the trial detracts from the conclusion that she was provided a full and meaningful opportunity to participate. Accordingly, this element is satisfied.

B. The Georgia Judgment Debt, Including Damages and Attorney Fees, is Excepted from Discharge

While the previous analysis supports that the Georgia Judgment is entitled to preclusive effect, it remains the duty of the bankruptcy court to determine whether the facts and issues determined are sufficient to support that the judgment debt should be excepted from discharge.

Wangai v. Stephens-Johnson (In re Stephens), Adv. No. 18-5155, 2019 Bankr. LEXIS 916, at *12, 2019 WL 1421170, at *5 (Bankr. N.D. Ga. Mar. 27, 2019). As previously noted, the Georgia Superior Court found that defamatory statements Ms. Oh posted in a Facebook community that included individuals from the local film industry were made knowing that Mr. Looby's reputation was very important to him personally, as well as to his continued employment as a camera crew member. The Georgia Superior Court determined that Ms. Oh intentionally made these statements knowing such statements would damage a person's personal reputation and make that person unemployable in the film industry. Based on these findings, the Georgia Superior Court determined that Ms. Oh made the false statements maliciously and without just cause, justification or excuse and acted with the specific intent and subjective motive to cause Mr. Looby harm. The Georgia Superior Court further concluded that harm resulted from Ms. Oh's actions in the form of Mr. Looby's embarrassment, loss of reputation and ability to earn a living in his field. These facts and conclusions are sufficient to constitute a "willful and malicious" injury pursuant to the standard set forth in Section (III)(A)(2) above and except the resulting debt from discharge.

⁵ See Docket Number 59, Ex. J.

The Georgia Superior Court calculated Mr. Looby's damages for personal injury, lost wages, pension benefits and mitigation expenses at \$259,000. These damages are a direct result of the injury to Mr. Looby caused by the defamatory statements and this Court concludes that they are excepted from discharge.

Mr. Looby further requests that the \$29,983.41 in attorney fees and litigation expenses awarded in the Georgia Judgment be excepted from discharge as well as applicable post-judgment interest pursuant to Ga. Code Ann. § 7-4-12 (2003).⁶ “Attorney fees are routinely included in the nondischargeable debt under § 523(a)(6) when they are included in a judgment for damages due to willful and malicious injury and are ancillary to that judgment.” *Watson*, No. 18-69905-BEM, 2019 Bankr. LEXIS 3297, at *14-15, 2019 WL 5388061, at *6 (citing *Stinson v. Morris (In re Morris)*, Adv. No. 05-9031, 2005 Bankr. LEXIS 2685, at *10, 2005 WL 6459867, at *4 (Bankr. N.D. Ga. Dec. 1, 2005)); *see also McCallum v. Pixley (In re Pixley)*, 504 B.R. 852, 870 (Bankr. E.D. Mich. 2014) (holding that once a judgment debt is excepted from discharge under § 523(a)(6), the entire judgment, including the attorney fee portion, is nondischargeable). The same is true of post-judgment interest. *See King v. Dennis (In re Dennis)*, Adv. No. 19-1034-WHD, 2020 Bankr. LEXIS 1990, at *13, 2020 WL 4290000, at *5 (Bankr. N.D. Ga. July 27, 2020) (determining a judgment debt to be excepted from discharge in the amount of the

⁶ Georgia statutory law provides for payment of post-judgment interest as follows:

- (a) All judgments in this state shall bear annual interest upon the principal amount recovered at a rate equal to the prime rate as published by the Board of Governors of the Federal Reserve System, as published in statistical release H. 15 or any publication that may supersede it, on the day the judgment is entered plus 3 percent.
...
- (c) The post judgment interest provided for in this Code section shall apply automatically to all judgments in this state and the interest shall be collectable as a part of each judgment whether or not the judgment specifically reflects the entitlement to post judgment interest.

Georgia Code Ann.. § 7-4-12(a), (c) (2003).

Georgia Superior Court Judgment including post-judgment interest at the legal rate under Georgia law from the date of the judgment until the debt is paid in full); *Pixley*, 504 B.R. at 870 (determining the entire state court judgment debt, including post-judgment interest awarded under state law, to be nondischargeable under § 523(a)(6)). This Court concludes that the attorney fees and expenses awarded in the Georgia Judgment, and post-judgment interest applicable to the Georgia Judgment under state law, are likewise excepted from discharge under § 523(a)(6).

IV. CONCLUSION

For the reasons stated, *Plaintiff Joshua Looby's Motion for Partial Summary Judgment* [Docket Number 58 and 59] is GRANTED.

Mr. Looby's *Motion for Partial Summary Judgment* does not address Count III of the Adversary Complaint relating to punitive damages. Accordingly, this Court will not enter a final judgment at this time. This matter will be set for a status conference by separate order to determine the next steps in this proceeding.

SO ORDERED.

Distribution List:

David V. Levy, Esq.
Eric J. Gunderson, Esq.