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KAWAAUHAU ET VIR *v.* GEIGER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 97–115. Argued January 21, 1998—Decided March 3, 1998

When petitioner Kawaauhau sought treatment for her injured foot, respondent Dr. Geiger examined and hospitalized her to attend to the risk of infection. Although Geiger knew that intravenous penicillin would have been more effective, he prescribed oral penicillin, explaining in his testimony that he understood his patient wished to minimize treatment costs. Geiger then departed on a business trip, leaving Kawaauhau in the care of other physicians, who decided she should be transferred to an infectious disease specialist. When Geiger returned, he canceled the transfer and discontinued all antibiotics because he believed the infection had subsided. Kawaauhau's condition deteriorated, requiring amputation of her leg below the knee. After trial in the malpractice suit brought by Kawaauhau and her husband, the jury found Geiger liable and awarded the Kawaauhaus approximately $355,000 in damages. Geiger, who carried no malpractice insurance, moved to Missouri, where his wages were garnished by the Kawaauhaus. Geiger then petitioned for bankruptcy. The Kawaauhaus requested the Bankruptcy Court to hold the malpractice judgment nondischargeable under 11 U. S. C. § 523(a)(6), which provides that a "discharge [in bankruptcy] . . . does not discharge an individual debtor from any debt . . . for willful and malicious injury . . . to another." Concluding that Geiger's treatment fell far below the appropriate standard of care and therefore ranked as "willful and malicious," that court held the debt nondischargeable. The District Court affirmed, but the Eighth Circuit reversed, holding that § 523(a)(6)'s exemption from discharge is confined to debts for an intentional tort, so that a debt for malpractice remains dischargeable because it is based on negligent or reckless conduct.

Held: Because a debt arising from a medical malpractice judgment attributable to negligent or reckless conduct does not fall within the § 523(a)(6) exception, the debt is dischargeable in bankruptcy. Section 523(a)(6)'s words strongly support the Eighth Circuit's reading that only acts done with the actual intent to cause injury fall within the exception's scope. The section's word "willful" modifies the word "injury," indicating that nondischargeability takes a deliberate or intentional *injury*, not merely, as the Kawaauhaus urge, a deliberate or intentional *act* that leads to injury. Had Congress meant to exempt debts

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resulting from unintentionally inflicted injuries, it might have described instead "willful acts that cause injury" or selected an additional word or words, *i. e.*, "reckless" or "negligent," to modify "injury." Moreover, § 523(a)(6)'s formulation triggers in the lawyer's mind the category "intentional torts," which generally require that the actor intend the *consequences* of an act, not simply the act itself. The Kawaauhaus' more encompassing interpretation could place within the excepted category a wide range of situations in which an act is intentional, but injury is unintended, *i. e.*, neither desired nor in fact anticipated by the debtor. A construction so broad would be incompatible with the well-known guide that exceptions to discharge should be confined to those plainly expressed, and would render superfluous the exemptions from discharge set forth in §§ 523(a)(9) and 523(a)(12). The Kawaauhaus rely on *Tinker* v. *Colwell*, 193 U. S. 473, which held that a damages award for the tort of "criminal conversation" survived bankruptcy under the 1898 Bankruptcy Act's exception from discharge for judgments in civil actions for "'willful and malicious injuries.'" The *Tinker* opinion repeatedly recognized that at common law the tort in question ranked as trespass *vi et armis*, akin to a master's "'action of trespass and assault . . . for the battery of his servant.'" *Tinker* placed criminal conversation solidly within the traditional intentional tort category, and this Court so confines its holding; that decision provides no warrant for departure from the current statutory instruction that, to be nondischargeable, the judgment debt must be "for willful and malicious *injury*." See, *e. g.*, *Davis* v. *Aetna Acceptance Co.*, 293 U. S. 328, 332. The Kawaauhaus' argument that, as a policy matter, malpractice judgments should be excepted from discharge, at least when the debtor acted recklessly or carried no malpractice insurance, should be addressed to Congress. Debts arising from reckless or negligently inflicted injuries do not fall within § 523(a)(6)'s compass. Pp. 60–64.

113 F. 3d 848, affirmed.

GINSBURG, J., delivered the opinion for a unanimous Court.

Norman W. Pressman argued the cause for petitioners. With him on the briefs were *Teresa A. Generous*, *Ronald J. Mann*, and *Edward B. Greensfelder*.

Laura K. Grandy argued the cause and filed a brief for respondent.*

**Gary Klein* filed a brief for the National Association of Consumer Bankruptcy Attorneys as *amicus curiae* urging affirmance.

JUSTICE GINSBURG delivered the opinion of the Court.

Section 523(a)(6) of the Bankruptcy Code provides that a debt "for willful and malicious injury by the debtor to another" is not dischargeable. 11 U. S. C. § 523(a)(6). The question before us is whether a debt arising from a medical malpractice judgment, attributable to negligent or reckless conduct, falls within this statutory exception. We hold that it does not and that the debt is dischargeable.

I

In January 1983, petitioner Margaret Kawaauhau sought treatment from respondent Dr. Paul Geiger for a foot injury. Geiger examined Kawaauhau and admitted her to the hospital to attend to the risk of infection resulting from the injury. Although Geiger knew that intravenous penicillin would have been more effective, he prescribed oral penicillin, explaining in his testimony that he understood his patient wished to minimize the cost of her treatment.

Geiger then departed on a business trip, leaving Kawaauhau in the care of other physicians, who decided she should be transferred to an infectious disease specialist. When Geiger returned, he canceled the transfer and discontinued all antibiotics because he believed the infection had subsided. Kawaauhau's condition deteriorated over the next few days, requiring the amputation of her right leg below the knee.

Kawaauhau, joined by her husband Solomon, sued Geiger for malpractice. After a trial, the jury found Geiger liable and awarded the Kawaauhaus approximately $355,000 in damages.[1] Geiger, who carried no malpractice insurance,[2]

[1] The jury awarded Margaret Kawaauhau $203,040 in special damages and $99,000 in general damages. *In re Geiger*, 172 B. R. 916, 919 (Bkrtcy. Ct. ED Mo. 1994). In addition, the jury awarded Solomon Kawaauhau $18,000 in general damages for loss of consortium and $35,000 for emotional distress. *Ibid.*

[2] Although the record is not clear on this point, it appears that Dr. Geiger was not required by state law to carry medical malpractice insurance. See Tr. of Oral Arg. 19.

moved to Missouri, where his wages were garnished by the Kawaauhaus. Geiger then petitioned for bankruptcy. The Kawaauhaus requested the Bankruptcy Court to hold the malpractice judgment nondischargeable on the ground that it was a debt "for willful and malicious injury" excepted from discharge by 11 U. S. C. § 523(a)(6). The Bankruptcy Court concluded that Geiger's treatment fell far below the appropriate standard of care and therefore ranked as "willful and malicious." Accordingly, the Bankruptcy Court held the debt nondischargeable. *In re Geiger*, 172 B. R. 916, 922–923 (Bkrtcy. Ct. ED Mo. 1994). In an unpublished order, the District Court affirmed. App. to Pet. for Cert. A–18 to A–22.

A three-judge panel of the Court of Appeals for the Eighth Circuit reversed, 93 F. 3d 443 (1996), and a divided en banc court adhered to the panel's position, 113 F. 3d 848 (1997) (en banc). Section 523(a)(6)'s exemption from discharge, the en banc court held, is confined to debts "based on what the law has for generations called an intentional tort." *Id.*, at 852. On this view, a debt for malpractice, because it is based on conduct that is negligent or reckless, rather than intentional, remains dischargeable.

The Eighth Circuit acknowledged that its interpretation of § 523(a)(6) diverged from previous holdings of the Sixth and Tenth Circuits. See *id.*, at 853 (citing *Perkins* v. *Scharffe*, 817 F. 2d 392, 394 (CA6), cert. denied, 484 U. S. 853 (1987), and *In re Franklin*, 726 F. 2d 606, 610 (CA10 1984)). We granted certiorari to resolve this conflict, 521 U. S. 1153 (1997), and now affirm the Eighth Circuit's judgment.

II

Section 523(a)(6) of the Bankruptcy Code provides:

> "(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

. . . . .

"(6) for willful and malicious injury by the debtor to another entity or to the property of another entity."

The Kawaauhaus urge that the malpractice award fits within this exception because Dr. Geiger intentionally rendered inadequate medical care to Margaret Kawaauhau that necessarily led to her injury. According to the Kawaauhaus, Geiger deliberately chose less effective treatment because he wanted to cut costs, all the while knowing that he was providing substandard care. Such conduct, the Kawaauhaus assert, meets the "willful and malicious" specification of § 523(a)(6).

We confront this pivotal question concerning the scope of the "willful and malicious injury" exception: Does § 523(a)(6)'s compass cover acts, done intentionally,[3] that cause injury (as the Kawaauhaus urge), or only acts done with the actual intent to cause injury (as the Eighth Circuit ruled)? The words of the statute strongly support the Eighth Circuit's reading.

The word "willful" in (a)(6) modifies the word "injury," indicating that nondischargeability takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury. Had Congress meant to exempt debts resulting from unintentionally inflicted injuries, it might have described instead "willful acts that cause injury." Or, Congress might have selected an additional word or words, *i. e.*, "reckless" or "negligent," to modify "injury." Moreover, as the Eighth Circuit observed, the (a)(6) formulation triggers in the lawyer's mind the category "intentional torts," as distinguished from negligent or reckless torts. Intentional torts generally require that the actor intend "the *conse-*

[3] The word "willful" is defined in Black's Law Dictionary as "voluntary" or "intentional." Black's Law Dictionary 1434 (5th ed. 1979). Consistently, legislative reports note that the word "willful" in § 523(a)(6) means "deliberate or intentional." See S. Rep. No. 95–989, p. 79 (1978); H. R. Rep. No. 95–595, p. 365 (1977).

quences of an act," not simply "the act itself." Restatement (Second) of Torts § 8A, Comment *a*, p. 15 (1964) (emphasis added).

The Kawaauhaus' more encompassing interpretation could place within the excepted category a wide range of situations in which an act is intentional, but injury is unintended, *i. e.*, neither desired nor in fact anticipated by the debtor. Every traffic accident stemming from an initial intentional act—for example, intentionally rotating the wheel of an automobile to make a left-hand turn without first checking oncoming traffic—could fit the description. See 113 F. 3d, at 852. A "knowing breach of contract" could also qualify. See *ibid.* A construction so broad would be incompatible with the "well-known" guide that exceptions to discharge "should be confined to those plainly expressed." *Gleason* v. *Thaw*, 236 U. S. 558, 562 (1915).

Furthermore, "we are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 837 (1988). Reading § 523(a)(6) as the Kawaauhaus urge would obviate the need for § 523(a)(9), which specifically exempts debts "for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance." 11 U. S. C. § 523(a)(9); see also § 523(a)(12) (exempting debts for "malicious or reckless failure" to fulfill certain commitments owed to a federal depository institutions regulatory agency).[4]

The Kawaauhaus heavily rely on *Tinker* v. *Colwell*, 193 U. S. 473 (1904), which presented this question: Does an award of damages for "criminal conversation" survive bankruptcy under the 1898 Bankruptcy Act's exception from

[4] Sections 523(a)(9) and (12) were added to the Bankruptcy Code in 1984 and 1990 respectively. See Pub. L. 98–353, 98 Stat. 364 (1984), and Pub. L. 101–647, 104 Stat. 4865 (1990).

discharge for judgments in civil actions for "'willful and malicious injuries to the person or property of another'"? *Id.*, at 480. The *Tinker* Court held such an award a nondischargeable debt. The Kawaauhaus feature certain statements in the *Tinker* opinion, in particular: "[An] act is willful . . . in the sense that it is intentional and voluntary" even if performed "without any particular malice," *id.*, at 485; an act that "necessarily causes injury and is done intentionally, may be said to be done willfully and maliciously, so as to come within the [bankruptcy discharge] exception," *id.*, at 487. See also *id.*, at 486 (the statute exempts from discharge liability for "'a wrongful act, done intentionally, without just cause or excuse'") (quoting from definition of malice in *Bromage* v. *Prosser*, 4 Barn. & Cress. 247, 107 Eng. Rep. 1051 (K. B. 1825)).

The exposition in the *Tinker* opinion is less than crystalline. Counterbalancing the portions the Kawaauhaus emphasize, the *Tinker* Court repeatedly observed that the tort in question qualified in the common law as trespassory. Indeed, it ranked as "trespass *vi et armis.*" 193 U. S., at 482, 483. Criminal conversation, the Court noted, was an action akin to a master's "action of trespass and assault . . . for the battery of his servant," *id.*, at 482. *Tinker* thus placed criminal conversation solidly within the traditional intentional tort category, and we so confine its holding. That decision, we clarify, provides no warrant for departure from the current statutory instruction that, to be nondischargeable, the judgment debt must be "for willful and malicious *injury.*"

Subsequent decisions of this Court are in accord with our construction. In *McIntyre* v. *Kavanaugh*, 242 U. S. 138 (1916), a broker "deprive[d] another of his property forever by deliberately disposing of it without semblance of authority." *Id.*, at 141. The Court held that this act constituted an intentional injury to property of another, bringing it within the discharge exception. But in *Davis* v. *Aetna Ac-*

ceptance Co., 293 U. S. 328 (1934), the Court explained that not every tort judgment for conversion is exempt from discharge. Negligent or reckless acts, the Court held, do not suffice to establish that a resulting injury is "wilful and malicious." See *id.*, at 332.

Finally, the Kawaauhaus maintain that, as a policy matter, malpractice judgments should be excepted from discharge, at least when the debtor acted recklessly or carried no malpractice insurance. Congress, of course, may so decide. But unless and until Congress makes such a decision, we must follow the current direction § 523(a)(6) provides.

* * *

We hold that debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6). For the reasons stated, the judgment of the Court of Appeals for the Eighth Circuit is

Affirmed.