

2016 WL 760201

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United States Court of Appeals,
Third Circuit.

In re Luanne MACRI, Debtor.
Saralyn McQueen, Appellant
v.
Luanne Macri.

No. 15-1982.

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Submitted Pursuant to Third
Circuit LAR 34.1(a) Feb. 22, 2016.

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Opinion Filed Feb. 25, 2016.

On Appeal from the United States District Court for the
District of New Jersey, (D.C. Civil Action No. 2-14-cv-
05053), District Judge: Honorable [Susan D. Wigenton](#).

Attorneys and Law Firms

Saralyn McQueen, Newark, NJ, pro se.

[Andrew G. Greenberg](#), Esq., Marlboro, NJ, for Luanne Macri.

Before [FUENTES](#), [VANASKIE](#) and [SCIRICA](#), Circuit
Judges.

OPINION *

PER CURIAM.

*1 Saralyn McQueen, proceeding pro se, appeals from an
order of the United States District Court for the District of
New Jersey affirming an order entered by the United States
Bankruptcy Court for the District of New Jersey. We will
affirm as well.

I.

In March 2007, McQueen brought a lawsuit against her
neighbor, Luanne Macri, in New Jersey court seeking
damages for injuries she had sustained when Macri's two pit
bulls attacked and bit her. The parties ultimately settled the
matter for \$21,886.53. In April 2011, Macri filed a petition

for relief under Chapter 7 of the Bankruptcy Code. At that
time, she had paid less than half of the settlement award to
McQueen.

On June 28, 2011, McQueen commenced an adversary
action in the bankruptcy case asking the court to declare
Macri's debt to her nondischargeable in accordance with
[section 523\(a\)\(6\) of the Bankruptcy Code](#), which excepts
from discharge any debt incurred "for willful and malicious
injury by the debtor to another entity or to the property
of another entity." [11 U.S.C. § 523\(a\)\(6\)](#). The Bankruptcy
Court conducted a trial to determine whether the settlement
award satisfied the criteria of [section 523\(a\)\(6\)](#), ultimately
concluding that it did not. Accordingly, the Bankruptcy
Court denied McQueen's request and declared the debt
dischargeable. McQueen appealed to the District Court. *See*
[28 U.S.C. § 158\(a\)](#). Following oral argument,¹ the District
Court affirmed. McQueen now appeals to this Court.

II.

We have jurisdiction over this appeal pursuant to [28 U.S.C.](#)
[§§ 158\(d\)](#) and [1291](#). "Our review of the District Court's
decision effectively amounts to review of the bankruptcy
court's opinion in the first instance." *In re Hechinger Inv. Co.*
of Del., 298 F.3d 219, 224 (3d Cir.2002). We review factual
findings of the bankruptcy court for clear error, while legal
determinations are subject to plenary review. *In re Fruehauf*
Trailer Corp., 444 F.3d 203, 209-10 (3d Cir.2006). "Factual
findings may only be overturned if they are completely devoid
of a credible evidentiary basis or bear no rational relationship
to the supporting data." *Id.* at 210 (internal alteration and
quotation marks omitted). The question of whether a debt
correctly falls within [section 523\(a\)\(6\)](#) is a question of law.
In re Gerhardt, 348 F.3d 89, 91 (5th Cir.2003).

[Section 523 of the Bankruptcy Code](#) excepts from discharge
"any debt ... for willful and malicious injury by the debtor to
another entity or to the property of another entity." [11 U.S.C.](#)
[§ 523\(a\)\(6\)](#). A debtor's actions are willful and malicious under
[section 523\(a\)\(6\)](#) "if they either have a purpose of producing
injury or have a substantial certainty of producing injury."
In re Conte, 33 F.3d 303, 307 (3d Cir.1994). The burden is
on the creditor to prove willful and malicious injury by a
preponderance of the evidence. *Grogan v. Garner*, 498 U.S.
279, 291 (1991).

Upon review, we agree with the District Court's determination that the Bankruptcy Court did not err in denying McQueen's request to declare the settlement award nondischargeable under [section 523\(a\)\(6\)](#). McQueen contends that the lower courts erred in determining that she failed to demonstrate that Macri willfully and maliciously ordered her dogs to attack her. According to McQueen, the dogs ran "directly at [her,] like somebody sicced them on [her] ." (Tr. 3/16/15, p. 4.) She also faults Macri for failing to properly contain her dogs, for failing to apologize after the attack, and for having "no compassion or value for human life." (Br.9.) We, like the District Court, sympathize with McQueen for the injuries she sustained. But we agree with both the District Court and Bankruptcy Court that McQueen did not meet her burden of demonstrating, by a preponderance of the evidence,

that Macri willfully and maliciously directed her dogs to attack her; without any additional evidence to support her allegations, her belief that Macri "sicced" the dogs on her is mere speculation.

III.

***2** We have considered McQueen's remaining arguments in support of this appeal and conclude that they are meritless.² Therefore, we will affirm the judgment of the District Court.

All Citations

--- Fed.Appx. ----, 2016 WL 760201 (Mem)

Footnotes

***** This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

1 Macri did not appear at the argument.

2 To the extent that McQueen accuses the District Court and Bankruptcy Court Judges of bias, she provides no support for this contention. We have reviewed the record before us and discern no bias.