



SO ORDERED,

**Judge Jamie A. Wilson
United States Bankruptcy Judge
Date Signed: November 14, 2023**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT SOUTH-
ERN DISTRICT OF MISSISSIPPI**

IN RE:

CHARLES RICHARD ROBB,

CASE NO. 22-02410-JAW

DEBTOR.

CHAPTER 13

DENISE A. MCLAUGHLIN

PLAINTIFF

VS.

ADV. PROC. NO. 23-00004-JAW

CHARLES RICHARD ROBB

DEFENDANT

**ORDER PARTIALLY GRANTING CREDITOR DENISE
MCLAUGHLIN'S MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on Creditor Denise McLaughlin's Motion for Summary Judgment (the "Motion") (Adv. Dkt. #31)¹ filed by Denise A. McLaughlin ("McLaughlin"); Creditor Denise McLaughlin's Memorandum in Support of her Motion for Summary Judgment (Adv. Dkt. #31-4) filed by McLaughlin; Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment (the "Response") (Adv. Dkt. #41) filed by Charles Richard Robb ("Robb"); the Memorandum in Opposition to Plaintiff's Motion for Summary Judgment (Adv. Dkt. #42) filed by Robb; Creditor Denise McLaughlin's Reply in Support of Her Motion for Summary Judgment (the "Reply") (Adv. Dkt. #43) filed by McLaughlin; and Defendant's Notice of Sup-

^{1 1} Citations to docket entries in the above-referenced adversary proceeding are cited as "(Adv. Dkt. #_)" and citations to docket entries in the above-styled bankruptcy case are cited as "(Dkt. #_)".

plemental Citation for His Response to Plaintiff's Motion for Summary Judgment (Adv. Dkt. #51) filed by Robb in the above-referenced adversary proceeding (the "Adversary").

Jurisdiction

The Court has jurisdiction over the parties to and subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (I), and (O). Notice of the Motion was proper under the circumstances.

Facts²

McLaughlin sued Robb for intentional infliction of emotional distress, defamation, invasion of privacy and other causes of action in the Circuit Court of Rankin County, Mississippi (the "Circuit Court"). (Adv. Dkt. #41 at 1). After a two-day trial held in early 2021, the jury found in McLaughlin's favor on her claims for intentional and negligent infliction of emotional distress, invasion of privacy, defamation/libel, negligence, and gross negligence. (Adv. Dkt. #41-2 at 16). The Circuit Court entered the Final Judgment by Verdict (the "State Court Judgment") (Adv. Dkt. #31 at 1) awarding McLaughlin \$285,750. (Adv. Dkt. #31-3).

Robb filed bankruptcy seeking to discharge that debt, and McLaughlin initiated the Adversary to obtain a determination that the State Court Judgment is nondischargeable under 11 U.S.C. 1328(a)(4), as a debt for willful or malicious personal injury. (Adv. Dkt. #1). McLaughlin filed the summary judgment Motion arguing that Robb is prohibited by the *Rooker-Feldman* doctrine and also collaterally estopped from challenging any factual findings and legal conclusions reached by the jury in the State Court Judgment. (Adv. Dkt. #31-4 at 1-2). During the pendency of the Adversary, the Mississippi Court of Appeals affirmed the State Court Judgment. *See Robb v.*

² The following findings of fact and conclusions of law are made pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure. To the extent any of the findings of fact herein are considered conclusions of law, they are adopted as such, and vice versa.

McLaughlin, 2021-CA-00672-COA, 2023 WL 6223919 (Miss. Ct. App. Sept. 26, 2023). No motion for rehearing was filed.

Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure (“Rule 56”), as made applicable to adversary proceedings by Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides that “[t]he court shall grant summary judgment 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). To prevail on a motion for summary judgment, a party must “cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials.” FED. R. CIV. P. 56(c)(1)(A). “[I]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law,” then the Court may grant the motion for summary judgment. *Am. Express Centurion Bank v. Valliani (In re Valliani)*, No. 13-4030, 2014 WL 345700, at *2 (Bankr. E.D. Tex. Jan. 30, 2014) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (internal quotations omitted)). “[T]here are two (2) elements that must be met in order for summary judgment to be appropriate: (1) there must be no genuine dispute of the material fact; and (2) the undisputed facts are such that the movant is entitled to judgment as a matter of law.” *Greenpoint AG, LLC v. Kent (In re Kent)*, 554 B.R. 131, 139 (Bankr. N.D. Miss. 2016).

The movant carries the initial burden “of informing the . . . court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of

a genuine issue of material fact.” *See Celotex Corp.*, 477 U.S. at 323. The Court “must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). If the moving party “fails to meet this initial burden, the motion must be denied, regardless of the nonmovant’s response.” *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994).

If the movant meets the initial burden, “the burden of production shifts to the nonmovant who then must rebut the presumption by coming forward with specific facts, supported by the evidence in the record, upon which a reasonable factfinder could find a genuine fact issue for trial.” *Quackenbush v. U.S. Dep’t of Educ. (In re Quackenbush)*, No. 16-00044-NPO, 2018 WL 4056993, at *3 (Bankr. S.D. Miss. Aug. 24, 2018) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). Further, “a party cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or ‘only a scintilla of evidence.’” *Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.*, 530 F.3d 395, 399 (5th Cir. 2008) (quoting *Little*, 37 F.3d at 1075). Summary judgment is proper where “the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.” *Celotex Corp.*, 477 U.S. at 323. By its express terms, Rule 56(a) provides for partial summary judgment. *Henderson v. Cmty. Bank of Miss. (In re Evans)*, 464 B.R. 272, 283 (Bankr. S.D. Miss. 2011).

Discussion

A. *Rooker-Feldman* Doctrine

Mclaughlin argues that the jury already determined that Robb caused a willful and malicious personal injury and that Robb’s opposition to this nondischargeability action constitutes re-litigation of the issues adjudicated in the State Court Judgment in violation of the *Rooker-Feldman*

doctrine.³ (Adv. Dkt. #31-4 at 3-4). The *Rooker-Feldman* doctrine prohibits the unsuccessful party of state court proceedings from using the lower federal courts as appellate courts. Under the *Rooker-Feldman* doctrine, lower courts may not exercise appellate jurisdiction “to modify or reverse state court judgments.” *Union Planters Bank Nat’l Ass’n v. Salih*, 369 F.3d 457, 462 (5th Cir. 2004) (quotation omitted).

Robb agrees that the *Rooker-Feldman* doctrine requires this Court to give full faith and credit to the State Court Judgment. (Adv. Dkt. #42 at 6). In fact, he implores this Court to “take the verdict as it was given.” (Adv. Dkt. #42 at 6). Robb’s main argument is that the State Court Judgment is flawed and that this Court cannot determine the dischargeability issue because the State Court Judgment is predicated on a finding of liability on both intentional and negligent causes of action. He argues that his actions were either intentional or negligent, but they cannot be both under Mississippi law.

Robb next claims that “[t]he jury actually returned its verdict written upon the jury instruction numbers 15 and 16 along with a sheet of yellow legal pad in which the jury wrote upon” and also argues that “when the jury returned the monetary verdict amount it was on jury instruction number 16.” (Adv. Dkt. #42 at 2). Robb associates “jury instruction numbers 15 and 16” with the sheet of paper on which the jury broke down the total amount of damages to support his contention that the jury awarded damages only on the negligence causes of action, which would fall outside the definition of a debt for a willful or malicious personal injury.

The Court’s review of the state court record reveals that seventeen jury instructions were submitted to the jury as well as a jury verdict form. (Adv. Dkt. #41-2). Jury Instruction No. 15 is

³ For this proposition, McLaughlin also cites the Reexamination Clause of the Seventh Amendment to the United States Constitution, which states that “no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.” U.S. CONST. amend. VII.

the form of the jury verdict. (Adv. Dkt. #41-2 at 16). It lists McLaughlin's six causes of action, and next to each cause of action are the words "Liable" and "Not Liable. The jury circled "Liable" for each listed cause of action. Jury Instruction No. 16, submitted by Robb, is a comparative fault instruction that allows the jury to assess the comparative fault of Robb and McLaughlin on her negligence causes of action.⁴ Finally, there is a separate sheet of lined paper on which the jury broke down its total award of damages into \$10,000 for expenses, \$275,000 for pain and suffering, and \$750 for cellular phone services.

Robb's representation to the Court that the sheet of paper was attached to Jury Instruction No. 16 is neither consistent with the state court record nor evidence that the jury awarded all monetary damages based solely on negligence. Attached as Exhibit D to Robb's Response is an incomplete document consisting only of the single sheet of paper containing the handwritten damage award. (Adv. Dkt. #41-4). However, the state court record reveals that this sheet of paper is actually the second page of a two-page document entered on the state court docket. (Adv. Dkt. #31-2 at 2-3). The first page is the jury verdict form (Jury Instruction No. 15), not Jury Instruction No. 16. (Adv. Dkt. #31-2 at 2-3).⁵ As to Jury Instruction No. 16, the jury did not find McLaughlin at fault as to any percentage. (Adv. Dkt. #41-3 at 1-2). There was no apportionment of fault to her and no corresponding reduction in the damages awarded her. (Adv. Dkt. #41-3 at 1-2).

Under the *Rooper-Feldman* doctrine, this Court is forbidden from reexamining and altering the State Court Judgment and must afford the jury's findings of fact with full faith and credit.

⁴ At the time of the jury trial, Robb was proceeding *pro se*. Robb is married to a licensed Mississippi attorney. Mississippi is a pure comparative-negligence state, so the comparative negligence of a plaintiff will diminish any damages awarded to the plaintiff in proportion to the amount of negligence the jury attributes to him. See *Wansley v. Brent*, 80 So. 3d 125, 128 (Miss. Ct. App. 2011).

⁵ Robb attached as Exhibit D to his Response only page 2 of two pages docketed at 129 in the state court case. Robb's Exhibit D does not contain any identifying information from the state court docket at the top of the page. (Adv. Dkt. #41-4). Exhibit 2 to McLaughlin's Motion paints a clearer picture and contains both pages of docket 129 – Jury Verdict Form 15 and the attached legal pad page awarding McLaughlin \$285,750 in damages. (Adv. Dkt. #31-2 at 2-3).

Richard v. Hoechst Celanese Chem. Grp., Inc., 355 F.3d 345, 350 (5th Cir. 2003). However, “the *Rooker-Feldman* doctrine does not deprive bankruptcy courts of subject matter jurisdiction to determine nondischargeability proceedings . . . because the Debtor does not seek a ‘review of the merits of the state court judgment’ . . .” *Robertson v. Murray (In re Murray)*, No. 20-01587-KMS, 2022 WL 982736, at *4 (Bankr. S.D. Miss. Mar. 31, 2022) (quoting *Harris v. Kamps (In re Kamps)*, 575 B.R. 62, 75 (Bankr. E.D. Pa. 2017)). The Court now turns to determine what preclusive effect, if any, the State Court Judgment has on the Adversary.

B. Collateral Estoppel/Issue Preclusion

Collateral estoppel, also known as issue preclusion, “promotes the interests of judicial economy by treating specific issues of fact or law that are validly and necessarily determined between two parties as final and conclusive.” *United States v. Shanbaum*, 10 F.3d 305, 311 (5th Cir. 1994). The doctrine of collateral estoppel applies in nondischargeability proceedings. *Grogan v. Garner*, 498 U.S. 279, 285 n.11 (1991). When giving preclusive effect to a state court judgment, a federal court must apply the preclusion law of the state in which the judgment was rendered. *Davis v. Chase Home Fin., LLC*, 597 F. App’x 249, 252 (5th Cir. 2015). Here, Mississippi law on issue preclusion applies. In Mississippi, collateral estoppel precludes relitigating a specific issue that was: (1) actually litigated in the former action; (2) determined by the former action; and (3) essential to the judgment in the former action. *Gibson v. Williams, Williams & Montgomery, P.A.*, 186 So. 3d 836, 845 (Miss. 2016).

McLaughlin asks the Court to give conclusive effect to the State Court Judgment based on the doctrine of collateral estoppel. (Adv. Dkt. #31 at 1-2). Robb, on the other hand, argues that “apply[ing] [collateral estoppel] to the case at bar, this Court cannot find that Plaintiff’s judgment is exempted from discharge under 11 U.S.C. § 1328(a)(4) as a matter of law.” (Adv. Dkt. #42 at

5). To support his contention, Robb provides no substantive argument, but rather merely quotes the legal standard for collateral estoppel set out in *Murray*, 2022 WL 982736, at *1. (Adv. Dkt. #42 at 4-5). But *Murray* differed materially from the facts before the Court in this case, as it involved a default judgment and not a jury verdict. Because there were no underlying factual findings regarding willful and maliciousness in *Murray*'s state court default judgment, the bankruptcy court could not give it preclusive effect and was required to make its own factual findings related to nondischargeability. *Id.* at *7.

For all the reasons that follow, the Court finds that the State Court Judgment contains “specific, subordinate, factual findings on the identical dischargeability issue in question . . . and the facts supporting the court’s findings are discernible from that court’s record.” *Dennis v. Dennis*, (*In re Dennis*), 25 F.3d 274, 278 (5th Cir. 1994). The Court thus agrees with McLaughlin that collateral estoppel prevents Robb from relitigating those specific, factual findings relevant to the dischargeability issue in question. *Fielder v. King* (*In re King*), 103 F.3d 17, 19 (5th Cir. 1997); *Raspanti v. Keaty* (*In re Keaty*), 397 F.3d 264, 273 (5th Cir. 2005); *Reticulum Mgmt., LLC v. Dean* (*In re Dean*), 620 B.R. 271, 273-74 (Bankr. N.D. Tex. 2020). With these principles in mind, the Court next compares the elements of McLaughlin’s nondischargeability claim with the facts supporting the jury’s award.

C. Robb’s debt is excepted from discharge under 11 U.S.C. § 1328(a)(4).

Section 1328(a)(4) of the Bankruptcy Code, which is the basis for McLaughlin’s claim, bars the discharge of debts for willful or malicious personal injury and provides as follows:

[A]s soon as practicable after completion by the debtor of all payments under the plan . . . the court shall grant the debtor a discharge of all debts provided for by the plan . . . , except any debt—
. . . .

(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

11 U.S.C. § 1328(a)(4).⁶

Section 1328(a)(4) differs from the more familiar § 523(a)(6), which is not applicable to chapter 13, in three respects. First, § 1328(a)(4) requires that damages be “awarded in a civil action.” Section 523(a)(6) does not. Second, § 1328(a)(4) uses the conjunction “or”—“willful *or* malicious,” whereas § 523(a)(6) uses the conjunction “and”—“willful *and* malicious.” *In re Hilgartner*, No. 20-10695-BFK, 2020 WL 6875960, at *2 (Bankr. E.D. Va. Aug. 5, 2020) (emphasis added). Finally, § 1328(a)(4) is limited to personal injury or death claims, while § 523(a)(6) includes injuries to property. *Id.* The Court addresses these four elements in reverse order.

1. What constitutes a “personal injury” under § 1328(a)(4)?

There are three recognized interpretations of “personal injury” under § 1328(a)(4). *Sales v. Bailey (In re Bailey)*, 555 B.R. 557, 561-62 (Bankr. N.D. Miss. 2016). “First, the narrow approach requires a physical injury to the individual[;]. . . . [s]econd, the middle approach reads ‘personal injury’ to include some non-physical injuries such as defamation, sexual harassment, age discrimination, and emotional distress, but not business or financial injuries.” *Id.* Finally, “the broad approach includes business and financial injuries if they are defined as a personal injury tort under non-bankruptcy law.” *Id.* (citation omitted). The majority of courts have followed the middle approach. *Id.* at 562. This Court elects to do the same.

For the reasons explained below, the Court is concerned only with the intentional torts for the purposes of determining non-dischargeability. The State Court Judgment found Robb liable for three intentional torts—intentional infliction of emotional distress, invasion of privacy, and

⁶ Unless otherwise noted, all citations are to the Bankruptcy Code found at title 11 of the U.S. Code.

defamation/libel—and three negligence causes of action—negligent infliction of emotional distress, negligence, and gross negligence. (Adv. Dkt. #41-2 at 16). Bankruptcy courts have found each of these intentional torts to constitute “personal injury” under § 1328(a)(4). *See Parker v. Miller (In re Miller)*, 589 B.R. 550, 563 (Bankr. S.D. Miss. 2018) (concluding that intentional infliction of emotional distress was a personal injury under the “middle approach”); *B.B. v. Grossman (In re Grossman)*, 538 B.R. 34, 42-43 (Bankr. E.D. Cal. 2015) (finding that intentional infliction of emotional distress and invasion of privacy constituted a personal injury under § 1328(a)(4)); *Adams v. Adams (In re Adams)*, 478 B.R. 476, 487 (Bankr. N.D. Ga. 2012) (finding that personal injury in § 1328(a)(4) excludes injuries to property but includes nonphysical injuries such as defamation and emotional distress). Under the chosen approach, McLaughlin’s injuries as to the intentional torts clearly are “personal injuries” within the purview of § 1328(a)(4). The State Court Judgment satisfied this element as to all three intentional torts.

2. Willful *or* Malicious Injury

The 2005 amendments to the Bankruptcy Code, significantly narrowed the chapter 13 “super discharge.” *Seubert v. Deluty (In re Deluty)*, 540 B.R. 41, 46 (Bankr. E.D.N.Y. 2015). Prior to the 2005 amendments, chapter 13 debtors were able to discharge debts arising from a debtor’s: “false pretenses, a false representation, or actual fraud.” *Id.* In 2005, to curtail the chapter 13 “super discharge,” Congress expanded § 1328(a)(2)’s list of non-dischargeable debts. *Id.* Congress did not incorporate into § 1328, § 523(a)(6)’s exclusion of debts for “willful *and* malicious injury by the debtor to another entity or to the property of another entity.” *Id.* at 46-47 (emphasis added). Instead, § 1328(a)(4) was added to except “willful *or* malicious” personal injuries caused by the debtor. *Id.* (emphasis added)

Case law interpreting § 1328(a)(4)'s "willful or malicious" language is scant. Because of the similarity to § 523(a)(6), most courts use the legion of case law interpreting § 523(a)(6)'s "willful and malicious" language. *See, e.g., id.* at 48; *Adams*, 478 B.R. at 483–89; *Grossman*, 538 B.R. at 39 ("[T]he meanings of the terms 'willful' and 'malicious' that were hammered out in decades of § 523(a)(6) litigation before enactment of § 1328(a)(4) have the same meanings in the later-enacted section. Nothing suggests that Congress intended that the terms 'willful' and 'malicious' should have different meanings . . .").

The U.S. Supreme Court has held that a plaintiff, to prevail under § 523(a)(6), must prove that the defendant acted "with the actual intent to cause injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998). This ruling eliminated the possibility of "willful and malicious" ever applying to negligent or reckless conduct. Soon after the U.S. Supreme Court's decision in *Kawaauhau*, the Fifth Circuit explained that an injury is willful and malicious where the debtor subjectively intended to cause injury or the injury was objectively substantially certain to result from the debtor's conduct. *Miller v. J.D. Abrams Inc. (In re Miller)*, 156 F.3d 598, 606 (5th Cir. 1998). Later, the Fifth Circuit reiterated this subjective/objective test and added that the injury must not be "sufficiently justified under the circumstances to render it not willful and malicious." *Berry v. Vollbracht (In re Vollbracht)*, 276 F. App'x 360, 361-62 (5th Cir. 2007). However, § 1328(a)(4) only requires the injury to be "willful or malicious" not both. Therefore, the standard for a creditor seeking the exception from discharge in a chapter 13 case differs from that of § 523(a)(6). The significance of that difference is unclear because the Fifth Circuit "essentially chose to equate the terms willful and malicious." *Mann Bracken, LLP v. Powers (In re Powers)*, 421 B.R. 326, 333 (Bankr. W.D. Tex. 2009).

McLaughlin's complaint filed in Rankin County Circuit Court (the "State Court Complaint") alleged the following events and conduct by Robb:

While McLaughlin and Robb were coworkers, he created an internet advertisement and posted that advertisement on backpage.com⁷ under the "adult services" category for the Jackson, Mississippi geographical area. (Adv. Dkt. #41-1 at 3-4). The advertisement featured photographs of a female, wearing revealing and provocative clothing and in provocative positions. (Adv. Dkt. #41-1 at 4). The advertisement listed the personal cell phone number belonging to McLaughlin and encouraged backpage.com users to call "Denisa." (Adv. Dkt. #41-1 at 4). "Denisa" is a variation of McLaughlin's first name—Denise.

As a result of the backpage.com advertisements, McLaughlin received numerous unwanted telephone calls and sexually explicit text messages on her personal cell phone. (Adv. Dkt. #41-1 at 4). A few days later, Robb posted another advertisement to backpage.com which encouraged users to call "Denisa" about the "half-time show" and again listed McLaughlin's personal cell phone number. (Adv. Dkt. #41-1 at 4).

McLaughlin reported the unwanted phone and text messages to law enforcement officials. (Adv. Dkt. #41-1 at 5). As part of its investigation, the Rankin County Sheriff's Department determined that the backpage.com advertisements using McLaughlin's telephone number had been placed by Robb from his computer, using his IP address. (Adv. Dkt. #41-1 at 5).

Robb was arrested by the Rankin County Sheriff's Department and his home and work computers were confiscated, along with his personal cell phone. (Adv. Dkt. #41-1 at 6). A Rankin County Grand Jury indicted Robb for cyberstalking in violation of section 97-45-15 of the

⁷ [Backpage.com](http://backpage.com) is an internet website that hosts advertisements selling sex, including advertisements for trafficked adults and children. [Backpage.com](http://backpage.com) is purposefully designed as a marketplace to facilitate and broker illegal commercial sex transactions. (Adv. Dkt. #41-1 at 2).

Mississippi Code, for knowingly making false statements concerning indecent conduct or criminal conduct of McLaughlin, with intent to threaten, harass, or terrify McLaughlin. (Adv. Dkt. #41-1 at 6).

At the civil trial, McLaughlin testified how Robb's harassment left her "scared . . . paranoid, deeply offended, humiliated, violated," and that Robb's "calculated, hateful actions" continued to haunt her. *Robb v. McLaughlin*, 2023 WL 6223919, at *2. Robb attempted to characterize his conduct as a "harmless prank" and stated he did it because he "wanted her phone to ring." *Id.* at *3. Robb testified that he posted a second advertisement because he felt like the first advertisement did not achieve his intended effect. *Id.* Robb stated, "I wanted to make her phone ring, and I didn't hear any evidence of that," so he "decided to do it again." *Id.* Robb further admitted at trial he used his access to his work computers without authorization to watch his coworkers. *Id.*

The Rankin County jury found Robb liable for three intentional torts: intentional infliction of emotional distress, invasion of privacy, and defamation/libel. (Adv. Dkt. #41-2 at 16). Importantly, "[i]ntentional torts generally require that the actor intend the *consequences* of an act, not simply the act itself." *Kawaauhau*, 523 U.S. at 61-62 (internal quotation marks omitted). The Court has already determined that McLaughlin's injuries arising from these causes of action constitute personal injuries. The Court also finds that these causes of action support a finding of willful or malicious injury under § 1348(a) for the reasons discussed below.

a. Intentional Infliction of Emotional Distress

In Mississippi, to prevail on a claim of intentional infliction of emotion distress, McLaughlin had to prove the following elements: "(1) the defendant acted willfully or wantonly towards the plaintiff by committing certain described actions; (2) the defendant's acts are ones which evoke outrage or revulsion in civilized society; (3) the acts were directed at, or intended to cause harm

to, the plaintiff; (4) the plaintiff suffered severe emotional distress as a direct result of the acts of the defendant; and (5) such resulting emotional distress was foreseeable from the intentional acts of the defendant.” *Pointer v. Rite Aid Headquarters Corp.*, 327 So. 3d 159, 170 (Miss. Ct. App. 2021). Jury Instruction No. 4 tracks those elements and is inserted below. (Adv. Dkt. #41-2 at 5).

Jury Instruction 4

If you find from a preponderance of the evidence in this case that:

1. Richard Robb acted willfully or wantonly towards Denise McLaughlin by obtaining her cell phone number without her permission, posting her cell phone number on a sexual solicitation website, and holding her out as soliciting sex from the public;
2. That Richard Robb’s acts are ones which evoke outrage or revulsion in civilized society;
3. That the acts were directed at or intended to harm Denise McLaughlin;
4. Denise McLaughlin suffered severe emotional distress as a direct result of the acts of Richard Robb; and
5. Such resulting emotional distress was foreseeable from the intentional acts of Richard Robb;

Then your verdict shall be for the Plaintiff, Denise McLaughlin.

The Rankin County Jury clearly found Robb liable for intentional infliction of emotional distress based on the facts alleged in the State Court Complaint. (Adv. Dkt. #31-2 at 2). Thus, the jury made a factual finding that Robb’s posting McLaughlin’s cell phone number in an online advertisement for sexual solicitation was done willfully and was the type of conduct that “evoke[s] outrage or revulsion in civilized society.”

b. Invasion of Privacy

In Mississippi, the intentional tort of invasion of privacy is comprised of the following four elements/subtorts: (1) the intentional intrusion upon the solitude or seclusion of another; (2) the appropriation of another's identity for an unpermitted use; (3) the public disclosure of private

facts; and (4) holding another to the public eye in a false light. *Raddin v. Manchester Educ. Found., Inc.*, 175 So. 3d 1243, 1251 (Miss. 2015). Jury Instruction No. 6 tracks those elements and is inserted below. (Adv. Dkt. #41-2 at 7).

Jury Instruction 6

If you find from a preponderance of the evidence in this case that:

1. Richard Robb intentionally intruded upon the solitude or seclusion of Denise McLaughlin by obtaining her cell phone number and publishing it on a sexual solicitation website; or

2. Richard Robb appropriated Denise McLaughlin's identity for an unpermitted used; or

3. Richard Robb publicly disclosed private facts about Denise McLaughlin; or

4. Richard Robb held Denise McLaughlin out to the public eye in a false light;

Then your verdict shall be for the Plaintiff, Denise McLaughlin.

The Rankin County Jury clearly found Robb liable for invasion of privacy based on the facts alleged in the State Court Complaint. (Adv. Dkt. #31-2 at 2). Thus, the jury made a factual finding that Robb's conduct of posting McLaughlin's cell phone number in an online advertisement for sexual solicitation was intentional.

c. Defamation/Libel

In Mississippi, an actionable defamatory statement is "[a]ny written or printed language which tends to injure one's reputation, and thereby expose him to public hatred, contempt or ridicule, degrade him in society, lessen him in public esteem or lower him in the confidence of the community" *Ferguson v. Watkins*, 448 So. 2d 271, 275 (Miss. 1984). Defamation/libel requires a plaintiff to prove the following elements exist: "(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and (4) either actionability of the statement irrespective of

special harm or the existence of special harm caused by the publication.” *Fulton v. Miss. Publishers Corp.*, 498 So. 2d 1215, 1216 (Miss. 1986). Jury Instruction No. 7 tracks those elements and is inserted below. (Adv. Dkt. #41-2 at 8).

Jury Instruction: 7

If you find from a preponderance of the evidence in this case that Richard Robb told a third person in writing that:

1. Denise McLaughlin advertised herself on a sexual solicitation website, or words to or with that effect;
2. These words accused Denise McLaughlin of being unchaste or promiscuous, of committing a major crime (prostitution), or engaging in conduct which may harm Denise McLaughlin in her business, trade, profession, or office; and
3. These words were false;

Then your verdict shall be for the Plaintiff, Denise McLaughlin.

The Rankin County Jury clearly found Robb liable for defamation/libel based on the facts alleged in the State Court Complaint. (Adv. Dkt. #31-2 at 2). Thus, Robb’s conduct of posting McLaughlin’s cell phone number in an online advertisement for sexual solicitation was intentional.

d. Summary

Based on the jury instructions the Rankin County jury in their State Court Judgment found Robb’s actions were intentional. This Court agrees that Robb’s actions were willful or malicious, and evidence an objective substantial certainty of harm and a subjective motive to cause harm to McLaughlin. The record is replete with egregious facts evidencing Robb’s deliberate choices without just cause.

3. The damages were awarded in a civil action against Robb.

Section 1328(a)(4) requires the debt be for the damages “awarded in a civil action against the debtor.” Here, the State Court Judgment establishes that McLaughlin suffered damages

“awarded in a civil action against the debtor” in the amount of \$285,750 of which \$10,000 was an economic amount for expenses incurred, \$275,000 was for pain and suffering/mental distress, and \$750 was for cell phone services. (Adv. Dkt. #31-2 at 2-3; Adv. Dkt. #31-3 at 1). There is no dispute that this element is met.

4. Amount of Debt Arising from Willful or Malicious Personal Injury

Robb’s only argument with merit is that the State Court Judgment is insufficient to determine the amount of the debt excepted from discharge because the State Court Judgment does not allocate the damages between the intentional and negligent causes of action.

Regrettably, there is inadequate evidence before the Court showing the extent, if any, that the jury apportioned the \$275,000 in personal injury damages among the six causes of action.⁸ Reluctantly, the Court concludes that full summary judgment cannot be granted at this juncture, and that the Motion should be granted only in part because of this deficiency.

The summary judgment record consists of only the complaint, the jury instructions, jury verdict form, and the State Court Judgment. That record does not include a transcript of the trial and is insufficient to allow this Court to determine the amount of damages that is nondischargeable under § 1328(a)(4).⁹ The State Court Judgment did not specify whether the jury awarded damages to McLaughlin based upon a finding of willful, malicious, or negligent conduct. It is entirely possible that the jury intended to award the full amount of damages as to all causes of action. Since “debts arising from reckless or negligent conduct do not fall within the compass of § 523(a)(6)” pursuant to *Kawaauhau*, this Court cannot grant preclusive effect to the amount of the

⁸ McLaughlin conceded in her Reply that the jury’s award of \$750 for “cellular phone services” and \$10,000 for “economic amount (expenses incurred)” do not constitute damages for “personal injury” under Section 1328(a)(4). (Adv. Dkt. #43 at 3).

⁹ To the extent the trial transcript contains any information regarding allocation of damages, this information would have been helpful to the Court in its analysis.

nondischargeable debt. *Hall v. Desper (In re Desper)*, No. 07-50810-NPO, 2010 WL 653864, at *6 (Bankr. S.D. Miss. Feb. 9, 2010) (quoting *Kawaauhau*, 523 U.S. at 64).

The jury found Robb liable on all causes of action: intentional and negligent infliction of emotional distress, invasion of privacy, defamation, negligence, and gross negligence. (Adv. Dkt. #41). But where a jury finds liability on multiple claims and not all of those claims meet the standard of non-dischargeability, if the jury does not allocate damages between the causes of action, the entirety of the State Court Judgment cannot be deemed nondischargeable without a finding by this Court regarding apportionment of the damages. *Spagnuolo v. Brooke-Petit*, 506 B.R. 1, 7 (D. Mass. 2014). Because the jury did not specify in the State Court Judgment which causes of action formed the basis of the damage award at issue here, the Court cannot determine what amount of the damages are excepted from discharge. *Id.* Accordingly, the issue of damages will be set for trial by further order of the Court.

Conclusion

Bankruptcy is for the honest but unfortunate debtor. That foundation of bankruptcy jurisprudence is protected by the non-dischargeability provision of § 1328(a)(4). Here, the state court record contained adequate findings of fact to conclude that McLaughlin suffered a personal injury arising from Robb's willful or malicious conduct. The only issue that remains for the Court is the apportionment of the damages among the three intentional torts: intentional infliction of emotional distress, invasion of privacy, and defamation/libel.

Pursuant to Rule 56(g), the facts set forth in this Order related to all issues other than the amount of the debt arising from personal injury will be deemed established for all purposes in the Adversary, including for purposes of trial.

IT IS, THEREFORE, ORDERED that the Motion is hereby granted in part, and partial summary judgment is hereby awarded in favor of McLaughlin as to the jury's findings of a willful or malicious injury arising out of the causes of action based on intentional infliction of emotional distress, invasion of privacy, and defamation/libel. To be clear, the Court will not retry Robb's liability for these intentional torts.

IT IS FURTHER ORDERED that the amount of the debt that is nondischargeable remains an issue for further resolution.

IT IS FURTHER ORDERED that by separate notice, an evidentiary hearing will be set for December 11, 2023 solely on the apportionment of damages among the three intentional torts.

##END OF ORDER##