



**SO ORDERED,**

**Judge Jamie A. Wilson  
United States Bankruptcy Judge  
Date Signed: January 11, 2024**

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

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN 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**

**FINAL ORDER EXCEPTING DAMAGES FROM DISCHARGE**

This matter came before the Court for trial on December 11, 2023 (the “Adversary Trial”) on the Complaint for Determination of Dischargeability of Debt and Other Relief (Adv. Dkt. #1)<sup>1</sup> filed by Denise A. McLaughlin (“McLaughlin”) and Defendant’s Answer to Complaint for Determination of Dischargeability of Debt, and Other Relief (Adv. Dkt. #30) filed by Charles Richard Robb (“Robb”) in the above-referenced adversary proceeding (the “Adversary”). At the Adversary Trial, Daniel D. Ware represented Robb; Chadwick M. Welch and Edward E. Lawler, Jr. represented McLaughlin. Both Robb and his wife, Ellen Robb, appeared and testified at the Adversary Trial. McLaughlin appeared at the Adversary Trial but did not testify. She introduced two exhibits

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<sup>1</sup> 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. #\_)”.

into evidence, marked as Creditor's 1-2.<sup>2</sup>

### **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 Adversary Trial was proper under the circumstances.

### **Procedural History**<sup>3</sup>

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 in both economic and non-economic damages. (Adv. Dkt. #31-3).

Robb filed bankruptcy seeking to discharge the entire \$285,750 debt,<sup>4</sup> and McLaughlin initiated the Adversary to obtain a determination that all or part of the State Court Judgment is nondischargeable under 11 U.S.C. § 1328(a)(4), as a debt for a willful or malicious personal injury. (Adv. Dkt. #1). McLaughlin conceded that only the non-economic amount of \$275,000 arises from a personal injury. (Adv. Dkt. #43). On June 5, 2023, McLaughlin filed a motion for summary judgment (Adv. Dkt. #31), arguing that Robb was collaterally estopped from challenging the factual findings and legal conclusions reached by the jury. (Adv. Dkt. #31-4 at 1-2). During the penden-

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<sup>2</sup> McLaughlin's exhibits are cited as "(Cr. Ex. #\_\_)"

<sup>3</sup> 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.

<sup>4</sup> As of the entry of this Order, the Court has not entered an order confirming a chapter 13 plan in Robb's underlying bankruptcy case. *See In re Robb*, 22-02410-JAW.

cy of that motion, the Mississippi Court of Appeals affirmed the State Court Judgment. *See Robb v. McLaughlin*, 371 So. 3d 761 (Miss. Ct. App. 2023). No motion for rehearing was filed in the appeal.

On November 14, 2023, this Court granted McLaughlin partial summary judgment (the “Summary Judgment Order”), finding that McLaughlin suffered a personal injury arising from Robb’s willful or malicious conduct within the meaning of 11 U.S.C. § 1328(a)(4). (Adv. Dkt. #54). In the Summary Judgment Order, the Court held that Robb’s liability as to the intentional torts was established by the principles of collateral estoppel and *res judicata*. *See Grogan v. Garner*, 498 U.S. 279 (1991). The Court is now tasked with apportioning the \$275,000 in non-economic damages awarded to McLaughlin by the Circuit Court jury among the causes of action consistent with the nondischargeability standard.

At the Adversary Trial on the apportionment issue, McLaughlin introduced into evidence the Circuit Court trial transcript (the “Transcript”) without objection. (Cr. Ex. #1).<sup>5</sup> According to the Transcript, the jury heard extensive testimony regarding Robb’s alleged history of workplace harassment. Some of the relevant testimony before the Circuit Court jury is summarized below.

In his testimony in Circuit Court, Robb admitted to creating *two* backpage.com<sup>6</sup> advertisements that posed McLaughlin as a prostitute named “Denisa”<sup>7</sup> and used McLaughlin’s personal telephone number as the contact information. (Cr. Ex. #1 at 128-29, 133). He testified that before posting the advertisement, he was not familiar with backpage.com. (Cr. Ex. #1 at 129). Robb re-

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<sup>5</sup> The Adversary Trial was the first time that the Transcript has been before this Court as evidence.

<sup>6</sup> Backpage.com was an internet website that hosted advertisements selling sex, including advertisements for trafficked adults and children. Backpage.com was purposefully designed as a marketplace to facilitate and broker illegal, commercial sex transactions. Backpage.com was seized by the Department of Justice in April of 2018 and shut down. (Adv. Dkt. #41-1 at 2); *See also* Press Release 18-427, United States Department of Justice, Justice Department Leads Effort to Seize Backpage.Com, the Internet’s Leading Forum for Prostitution Ads, and Obtains 93-Count Federal Indictment (Apr. 9, 2018) (<https://www.justice.gov/opa/pr/justice-department-leads-effort-seize-backpagecom-internet-s-leading-forum-prostitution-ads>).

<sup>7</sup> “Denisa” is a minor variation of McLaughlin’s first name, Denise. (Cr. Ex. #1 at 72). When the advertisements were posted, McLaughlin was sixty years old. (Cr. Ex. #1 at 105).

searched for an escort website to advertise McLaughlin's services and selected backpage.com to post his advertisement. (Cr. Ex. #1 at 129-31). He then searched backpage.com's other advertisements to find a provocative picture of a red-headed, scantily-clad female (who was not McLaughlin) to post with McLaughlin's information. (Cr. Ex. #1 at 131; Cr. Ex. #2).

Robb's *first* backpage.com advertisement indicated that McLaughlin would perform sexual acts at a rate of \$160 per hour and \$100 per half hour. (Cr. Ex. #1 at 73, 132; Cr. Ex. #2). He testified that his intent in posting the first advertisement was to "make her phone ring." (Cr. Ex. #1 at 133; Cr. Ex. #2). Robb stated that McLaughlin was "the type of person to complain and tell everybody about her issues at work" and he was disappointed when he did not hear any reaction indicating that his advertisement had achieved the desired effect. (Cr. Ex. #1 at 133-34). When he did not "hear anything about it," he thought the first advertisement did not get posted, so he uploaded McLaughlin's telephone number to backpage.com a *second* time. (Cr. Ex. #1 at 134).

Robb admitted that he posted the backpage.com advertisement after McLaughlin made a complaint against him in their workplace. (Cr. Ex. #1 at 136). The basis of McLaughlin's complaint against Robb involved lurid conversations he had with a female coworker whose cubicle adjoined McLaughlin's. (Cr. Ex. #1 at 60, 137). McLaughlin followed the proper protocols for reporting Robb to her supervisor when she made the complaint. (Cr. Ex. #1 at 136).

The Transcript indicates that the jury also heard testimony that in 2008 another female coworker filed a complaint against him after Robb, tasked with fixing her computer, told her to "get your little a\*\* up," grabbed her by her wrist, and wrapped her arm around her head. (Cr. Ex. #1 at 139-40). The coworker asked him to stop multiple times before he let go. (Cr. Ex. #1 at 142). Robb denied that this incident ever happened, although he is trained in Hapkido, a self-defense martial art. (Cr. Ex. #1 at 142).

Robb admitted to tampering with the Facebook page of a direct subordinate, male coworker. (Cr. Ex. #1 at 144). He logged into the male coworker's Facebook account and changed his profile to reflect that he was involved in a homosexual relationship. (Cr. Ex. #1 at 144, 148). According to Robb, the coworker thought it was a funny prank and even commended him for it. (Cr. Ex. #1 at 144). However, evidence showed that the coworker had filed complaints with company management that Robb had threatened and harassed him. (Cr. Ex. #1 at 145-46). Because of this incident, Robb was counseled by company management and placed on probation for a year in March of 2016. (Cr. Ex. #1 at 149-50). This highly prejudicial testimony regarding Robb's inappropriate workplace conduct was unrebutted. (Cr. Ex. #1 at 154-158).

The jury further learned that in November of 2016 (eight months into his one-year probationary period), Robb posted the backpage.com advertisements. (Cr. Ex. #1 at 151). When McLaughlin began receiving calls and text messages in response to the backpage.com advertisements, she filed a complaint with the Flowood Police Department. (Cr. Ex. #1 at 70). Thereafter, Robb was arrested for cyberstalking and was suspended from his job at the Mississippi State Rating Bureau ("MSRB") without pay. (Cr. Ex. #1 at 70, 151). He eventually separated from MSRB. (Cr. Ex. #1 at 151).

But even after his separation from the company, Robb maintained access to the company's camera system. (Cr. Ex. #1 at 151). Robb admitted to using the MSRB camera system to surreptitiously watch his former coworkers. (Cr. Ex. #1 at 152). Robb's access to the company camera system was terminated after he texted a female coworker, commenting on her activities in the office while watching her on the MSRB cameras, and she brought it to the attention of her supervisor. (Cr. Ex. #1 at 152).

The jury ultimately found in favor of McLaughlin but did not allocate the damages among

the six causes of action.

### **Positions of the Parties as to Allocation of Damages**

Robb argues that the Court should “split the baby” and apportion the \$275,000 evenly across all six causes of action. (Adv. Tr. at 1:43 (Dec. 11, 2023)).<sup>8</sup> At bottom (and without legal or factual support), he argues that because the jury found him liable on all six theories of liability and only three of those meet the standard for exception from discharge under 11 U.S.C. § 1328(a)(4)<sup>9</sup> as intentional torts, only half the awarded amount, or \$137,500, should be declared nondischargeable. (Adv. Tr. at 1:43-45). Robb argues that this apportionment is the only “fair way to do it.” (Adv. Tr. at 1:45).

McLaughlin argues that the entire \$275,000 should be excepted from discharge and attributed to the three intentional torts. (Adv. Tr. at 1:55).

### **Discussion**

The State Court Judgment awarded McLaughlin \$285,750, including \$275,000 in damages for “Pain and Suffering/Mental Distress.” (Adv. Dkt. #31-2). As such, the State Court Judgment fixed the amount of the debt between Robb and McLaughlin. *B.B. v. Grossman (In re Grossman)*, 538 B.R. 34, 44 (Bankr. E.D. Cal. 2015). McLaughlin bears the burden of proving by a preponderance of the evidence how the damages should be apportioned among the six causes of action. *Humphries v. Rogers (In re Humphries)*, 516 B.R. 856, 864 (Bankr. N.D. Miss. 2014).

Under the principles of collateral estoppel and *res judicata*, this Court is not permitted to alter the State Court Judgment. *Union Planters Bank Nat’l Ass’n v. Salih*, 369 F.3d 457, 462 (5th Cir. 2004). This Court is only determining how the \$275,000 in non-economic damages awarded

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<sup>8</sup> The Adversary Trial was not transcribed. Citations are to the timestamp of the audio recording.

<sup>9</sup> Hereinafter, all statutory citations and references are to title 11 of the United States Code except where otherwise noted.

in the State Court Judgment should be apportioned across the six causes of action. *See Petit v. Spagnuolo (In re Spagnuolo)*, No. 11-10844-JNF, 2014 WL 6461799 (Bankr. D. Mass. Nov. 17, 2014).

In addition to finding him liable for three intentional torts, the jury also found Robb liable for three negligence causes of action. (Adv. Dkt. #31-2). At the Adversary Trial, this Court invited Robb to show where in the Transcript at Cr. Ex. #1 any evidence existed that the jury could have used to base their verdict on negligence. (Adv. Tr. at 1:51). Robb now claims that he was negligent by putting McLaughlin's personal information out onto the internet and that he testified at trial to that effect. (Adv. Tr. at 1:52). As proof of his negligence, he cites to the Transcript glossary and the page numbers where the terms "negligence" and "negligent" appear. (Adv. Tr. at 1:56). The only references to "negligence" and "negligent" in the Transcript are in the jury instruction proposals, the Circuit Court's instruction to the jury, and the jury's verdict for McLaughlin. (Cr. Ex. #1 at 175,177-79, 187-89, 191-92, 208, 212).

Notwithstanding Robb's inability to point to any testimony in the Transcript related to negligent conduct, the Court has elected to scour the Transcript at Cr. Ex. #1 for *any* shred of evidence that Robb's conduct could have been negligent. It can find *none*.

While McLaughlin sued Robb on three negligence causes of action, her pursuit of Robb at trial was focused solely on the intentional torts. There is *no* evidence in the Transcript that would lead a jury or this Court to allocate the \$275,000 awarded to anything other than the intentional torts. Outside of testimony regarding McLaughlin's claim against their former employer for negligent hiring and retention of Robb, there is no mention of negligence in the Transcript until jury instructions were proposed. (Cr. Ex. #1 at 106). Further, counsel for McLaughlin's closing argument was solely focused on the intentional torts. (Cr. Ex. #1 at 194-200). Robb's

closing argument focused on disparaging McLaughlin and attempting to convince the jury that she did not suffer any harm or damages resulting from his actions, *not* that he was negligent or that he did not intend the consequences of his intentional acts. (Cr. Ex. #1 at 201-05).

In the first sentence of Robb's brief opposing summary judgment, he claims that he made "a very dumb decision." (Adv. Dkt. #42 at 1). But it was not just one decision – he researched backpage.com, deliberately selected a suggestive photograph, and implemented a scheme to intentionally harm McLaughlin by posting her personal information to the internet, posing her as a prostitute not *once* but *twice*. Make no mistake, obtaining a coworker's telephone number, then creating a fake advertisement holding her out as a prostitute *twice* is no accident. The Transcript clearly shows that it was a series of intentional acts calculated to inflict harm on McLaughlin.

### **Conclusion**

This debt should not be and is not dischargeable. A conclusion that the jury intended to attribute any amount of the damage award to any negligence claim is not supported by any of the testimony heard by the jury.

Given the appalling nature of the testimony in the Circuit Court, this Court has no difficulty in inferring that the jury intended to allocate the entire \$275,000 amount of pain and suffering damages to the intentional tort causes of action. Robb's actions were so clearly intentional that it is inconceivable that the jury intended to carve out any portion of the damages attributable to any claim of negligence. The Court finds that McLaughlin has exceeded her burden of proving by a preponderance of the evidence that the jury intended for the \$275,000 to represent the award for Robb's intentional conduct. There is more than ample testimony which would have supported an award of \$275,000 for each separate intentional tort. This inference is supported by the fact



that the jury ultimately awarded McLaughlin more than her settlement demand.<sup>10</sup> The Court finds that each intentional tort, standing alone, supports the total non-economic jury award of \$275,000.

For the foregoing reasons, the Court finds that \$275,000 of the damages awarded to McLaughlin by the jury is nondischargeable. From this Court's review of the Transcript, the Court finds that 100% of the \$275,000 damage award is wholly attributable to each of the three intentional torts arising out of Robb's willful and malicious conduct – intentional infliction of emotional distress, defamation/libel, and invasion of privacy. While this Court is constrained by the jury's award of \$275,000, the record supports that the full amount of \$275,000 could have been awarded under each of the three intentional tort causes of action and not *pro rata*.

IT IS, THEREFORE, ORDERED that the debt of \$275,000 owed McLaughlin by Robb, arising from the State Court Judgment is hereby deemed nondischargeable and is excepted from discharge pursuant to 11 U.S.C. § 1328(a)(4).

IT IS FURTHER ORDERED that there are no further claims to be resolved by the Court as to the rights or liabilities of any party in this Adversary and that this Adversary is finally and fully adjudicated.

##END OF ORDER##

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<sup>10</sup> During Robb's *pro se* cross-examination of McLaughlin in Circuit Court, he attempted to elicit testimony that her mental distress stemmed from debts she owed and that the only reason she was suing him was to get money to pay off those debts. (Cr. Ex. #1 at 117-118). In so doing, the jury heard him ask about her prior settlement demand of \$250,000. (Cr. Ex. #1 at 118). Notwithstanding this testimony, the jury awarded her \$285,750, an additional \$35,750.