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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

BRITTANY HAYS, *Plaintiff/Appellant*,

v.

ELIZABETH K. HAYS, et al., *Defendants/Appellees*.

No. 1 CA-CV 19-0724
FILED 7-29-2021

Appeal from the Superior Court in Maricopa County
No. CV2015-004379
The Honorable Daniel J. Kiley, Judge

DISMISSED IN PART; AFFIRMED IN PART

COUNSEL

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By Mick Levin
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MEMORANDUM DECISION

Chief Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Cynthia J. Bailey joined.

C A T T A N I, Chief Judge:

¶1 Brittany Hays appeals the superior court's judgment dismissing with prejudice her negligence claims against Elizabeth Hays and Mike Waters due to discharge in bankruptcy.[1] Brittany also challenges the court's ruling staying her battery claim against Hope Waters to allow her to ask the bankruptcy court to determine whether that claim is nondischargeable. For reasons that follow, we dismiss the appeal as to Hope and affirm the dismissal of Brittany's claims against Elizabeth and Mike.

FACTS AND PROCEDURAL BACKGROUND

¶2 In 2015, Brittany sued Elizabeth, Mike, and Hope for damages stemming from events that occurred in and before 2001 when Brittany was a minor. Brittany asserted battery claims against Hope and Mike as well as negligence claims against Mike and Elizabeth (premised on their failure to protect Brittany from the acts underlying the battery claims). After an 11-day trial, a jury found in favor of Brittany on her battery claim against Hope and her negligence claims against Elizabeth and Mike, awarding $2.7 million in damages (apportioned among these defendants and one non-party).

¶3 After the jury's verdicts—and almost four years into the case—Elizabeth, Mike, and Hope filed objections to Brittany's proposed forms of judgment, asserting for the first time that Brittany's claims had been discharged as a result of bankruptcy proceedings that occurred after the events giving rise to Brittany's claims. Elizabeth had filed a no-asset Chapter 7 bankruptcy proceeding in mid-2002, leading to a discharge later that year; Mike and Hope had also filed a no-asset Chapter 7 proceeding in mid-2010, leading to a discharge later that year. All three asserted that Brittany's claims arising from their pre-petition conduct were barred by the

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[1] To avoid confusion between individuals who share a surname, and with respect, we refer to all parties by first name.

post-discharge injunction and that any resulting judgment against them would be void. *See* 11 U.S.C. § 524(a).

¶4 Over Brittany's objection, the superior court ruled that Brittany's claims against Elizabeth and Mike had been discharged in bankruptcy, reasoning that laches did not apply to prevent reliance on the discharge, that it had no basis to conclude Elizabeth's liability was based on post-discharge conduct (and thus not subject to the discharge), and that the negligence claims against Elizabeth and Mike did not fall within Brittany's asserted exception to discharge. As to Brittany's battery claim against Hope, the court reasoned that the claim plausibly fell within the "willful and malicious injury" exception to discharge, *see* 11 U.S.C. § 523(a)(3)(B), (6), and stayed that portion of the case to allow Brittany an opportunity to seek a nondischargeablility determination from the bankruptcy court. The court dismissed Brittany's claims against Elizabeth and Mike with prejudice and certified the judgment as final under Rule 54(b) of the Arizona Rules of Civil Procedure.

¶5 The superior court denied Brittany's timely motion for new trial and for relief from judgment, and Brittany timely appealed.

DISCUSSION

I. Appellate Jurisdiction and Scope of the Appeal.

¶6 Brittany's appeal challenges both the final judgment dismissing her claims against Mike and Elizabeth and the superior court's ruling staying her battery claim against Hope. Because the superior court finally resolved Brittany's negligence claims against Mike and Elizabeth and certified that judgment as final under Rule 54(b), we have jurisdiction to consider that aspect of the case under A.R.S. § 12-2101(A)(1) (final judgment), (2) (denial of relief from judgment), and (5)(a) (denial of new trial). But the superior court's ruling staying (but not dismissing) Brittany's battery claim against Hope did not fully resolve that claim and thus does not constitute a final, appealable judgment. *See, e.g.*, *Musa v. Adrian*, 130 Ariz. 311, 312–13 (1981); *see also* Ariz. R. Civ. P. 54(b)–(c). And Brittany's motion for new trial or for relief from that order did not create an appealable ruling absent an underlying final judgment. *See Sw. Barricades, L.L.C. v. Traffic Mgmt., Inc.*, 240 Ariz. 139, 141, ¶ 11 (App. 2016) (noting that a Rule 60 motion must be directed to a final ruling); *Maria v. Najera*, 222 Ariz. 306, 308, ¶ 10 (App. 2009) ("Because the [ruling] at issue here was not final, the denial of the new trial motion directed to that order did not create appellate jurisdiction . . . ."). Accordingly, lacking an appealable judgment

or ruling in this regard, we dismiss Brittany's appeal as to Hope for lack of appellate jurisdiction.

II. Bankruptcy Discharge.

¶7 Brittany argues the superior court erred by determining that her negligence claims against Elizabeth and Mike had been discharged in their respective bankruptcies and by denying her related motion for new trial. We review de novo the superior court's assessment of issues of law and will uphold its factual findings if substantially supported by the evidence. *See Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 114 (1966). We review the denial of a motion for new trial for an abuse of discretion, which can include relying on an error of law in reaching a discretionary conclusion. *Warne Invs., Ltd. v. Higgins*, 219 Ariz. 186, 194, ¶ 33 (App. 2008); *see also Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, 50, ¶ 27 (App. 2007).

¶8 A discharge in a no-asset Chapter 7 bankruptcy case generally discharges the debtor from all debts that arose before the debtor filed the bankruptcy petition. 11 U.S.C. § 727(b); *see also Webber v. Grindle Audio Prods., Inc*., 204 Ariz. 84, 87, ¶ 14 (App. 2002); *Beezley v. Cal. Land Title Co. (In re Beezley)*, 994 F.2d 1433, 1435–36 (9th Cir. 1993) (O'Scannlain, J., concurring). The discharge voids any judgment against the debtor on a discharged debt and enjoins any action to collect a discharged debt as the debtor's personal liabilty. 11 U.S.C. § 524(a). The discharge is subject to several enumerated exceptions, including certain unscheduled debts of which the creditor was not given notice and debts stemming from "willful and malicious injury by the debtor to another entity." 11 U.S.C. § 523(a)(6), (3); *see also* 11 U.S.C. § 727(b).

¶9 Here, Elizabeth filed for bankruptcy in May 2002 and Mike in May 2010. Brittany's complaint alleged negligence by Elizabeth and Mike (the conduct giving rise to their debts owed to Brittany) that occurred in and before 2001. These debts arose before either Elizabeth or Mike petitioned for bankruptcy, supporting the superior court's conclusion that the discharge applied and required dismissal of Brittany's claims. *See* 11 U.S.C. §§ 524(a), 727(b). Brittany asserts, however, that the superior court erred because (1) both Elizabeth's and Mike's debts were excepted from discharge, (2) Elizabeth's debt arose at least in part from post-petition conduct to which the discharge would not apply, and (3) even if the discharge would otherwise apply, laches should prevent Elizabeth and Mike's reliance on the discharge (or prevent their opposition to her claim that the debts were nondischargeable).

A. Exception from Discharge.

¶10 Brittany challenges the superior court's determination that her claims against Elizabeth and Mike were not excepted from discharge as debts "for willful and malicious injury by the debtor" under 11 U.S.C. § 523(a)(6). Brittany does not, however, argue that the court's ruling was substantively incorrect; rather, she asserts that the court either should have resolved the issue as to all three defendants (including Hope) or none at all.

¶11 As explained above, *see supra* ¶ 7, we lack jurisdiction to review the superior court's non-final ruling staying the battery claim against Hope and deferring ruling on nondischargeability to the bankruptcy court. The only question properly before us is the ruling as to Elizabeth and Mike, and Brittany agrees that the superior court had concurrent jurisdiction with the bankruptcy court to determine whether her claims against them were excluded from the discharge. *See* 28 U.S.C. § 1334(b); 11 U.S.C. § 523(c)(1), (a)(6), (a)(3)(B); *Fidelity Nat'l Title Ins. Co. v. Franklin (In re Franklin)*, 179 B.R. 913, 919–24 (Bankr. E.D. Cal. 1995) (explaining the general principle of concurrent jurisdiction, the § 523(c)(1) exception providing exclusive federal jurisdiction over § 523(a)(6) and similar nondischargeability actions, and the exception to that exception re-establishing concurrent state and federal jurisdiction over a § 523(a)(3)(B) determination whether—after the discharge has been granted—an omitted debt without notice to the creditor is nondischargeable under § 523(a)(6)); *In re Hicks*, 184 B.R. 954, 962 (Bankr. C.D. Cal. 1995) (same); *cf. Pavelich v. McCormick, Barstow, Sheppard, Wayte & Carruth LLP (In re Pavelich)*, 229 B.R. 777, 783–84 (B.A.P. 9th Cir. 1999). Similarly, Brittany offers no substantive basis to undermine the superior court's conclusion that her *negligence* claims against Elizabeth and Mike did not fall within the discharge exception for willful and malicious injury. 11 U.S.C. § 523(a)(3)(B), (6); *Kawaauhau v. Geiger*, 523 U.S. 57, 64 (1998) (upholding dischargeability of medical malpractice claims under the bankruptcy code because "debts arising from recklessly or negligently inflicted injuires do not fall within the compass of § 523(a)(6)").

B. Post-Petition Conduct.

¶12 Noting that the discharge only voids a debtor's personal liability incurred before the bankruptcy action, *see* 11 U.S.C. § 727(b), Brittany argues that her negligence claim against Elizabeth was based in part on Elizabeth's post-petition conduct, which would not be subject to the discharge. Brittany argues that her trial testimony described negligent conduct by Elizabeth running from 2000 to 2007, and she asserts that the

superior court's ruling implicitly acknowledged at least *some* evidence of Elizabeth's post-petition conduct by finding no basis to determine the verdict against Elizabeth "was based *solely* on post-discharge conduct." (Emphasis added.)

¶13 But no record evidence shows that Elizabeth's liability was based, even in part, on her post-petition conduct. Both Brittany's complaint and the joint pretrial statement alleged conduct by Elizabeth occuring in or before 2001, before Elizabeth's 2002 bankruptcy. Similarly, the superior court expressly cited the bulk of trial evidence about Elizabeth's pre-bankruptcy actions without detailing any evidence of wrongful post-2002 conduct. And Brittany did not provide trial transcripts to support her factual assertion. *See* ARCAP 11(c)(1)(a) (noting appellant's duty to provide all transcripts "necessary for proper consideration of the issues on appeal"). Accordingly, we presume the missing transcripts would support the court's conclusion that there was no basis upon which to apportion the verdict for Elizabeth's post-bankruptcy conduct. *See State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 16 (App. 2003).

C. Laches.

¶14 Brittany further argues that Mike and Elizabeth waited too long to raise the bankruptcy discharge as a defense, causing her significant prejudice, and that the superior court erred by concluding that she could not rely on the doctrine of laches. Although we review a laches finding for an abuse of discretion, we review de novo whether laches is available as a potenial defense to a particular kind of action. *See Cyprus Bagdad Copper Corp. v. Ariz. Dep't of Revenue*, 196 Ariz. 5, 8, ¶ 9 (App. 1999); *Beaty v. Selinger (In re Beaty)*, 306 F.3d 914, 921 (9th Cir. 2002).

¶15 Like the superior court, we are sympathetic to Brittany's frustration with the wasted time and money occasioned by Mike and Elizabeth's failure to raise discharge through almost four years of litigation. But the discharge enjoins any action to recover a discharged debt and voids any judgment on a discharged debt "whether or not discharge of such debt is waived." 11 U.S.C. § 524(a)(1)–(2). The discharge thus is nonwaivable and absolute, and it cannot be "circumvented on equitable grounds" such as laches based on the debtor's post-petition conduct. *Lone Star Sec. & Video, Inc. v. Gurrola (In re Gurrola)*, 328 B.R. 158, 160, 163–64, 170, 172 (B.A.P. 9th Cir. 2005); *Rooz v. Kimmel (In re Kimmel)*, 378 B.R. 630, 638 (B.A.P. 9th Cir. 2007), *aff'd*, 302 Fed. Appx. 518 (9th Cir. 2008).

¶16 Brittany argues that she may nevertheless employ laches to prevent Elizabeth and Mike from opposing nondischargeability under 11 U.S.C. § 523(a)(6) (notwithstanding the fact that Elizabeth and Mike's delay was in initially asserting the discharge, not in opposing Brittany's nondischargeability claim). But the authority on which she relies does not support this proposition. In one case, the court approved the use of laches by a debtor as a *defense* to a § 523(a)(3)(B) nondischargeability action, not (as in Brittany's case) as a *sword* for the creditor to use to establish nondischargeability. *Beaty*, 306 F.3d at 923, 926 (holding that "laches is available *as a defense*" in certain nondischargeability actions) (emphasis added). And the other case addressed applicability of laches to a debtor's unduly delayed claim objection in a Chapter 13 case, a wholly different context than a Chapter 7 discharge (and post-discharge assertion of nondischargeability) as in this case. *Shook v. CBIC (In re Shook)*, 278 B.R. 815, 829–30 (B.A.P. 9th Cir. 2002). In short, the superior court correctly found that laches could not prevent reliance on discharge as a defense to Brittany's claims.

CONCLUSION

¶17 We affirm the judgment dismissing Brittany's negligence claims against Elizabeth and Mike, and we dismiss the appeal as to Hope. In an exercise of our discretion, we deny Elizabeth and Mike's request for attorney's fees under A.R.S. § 12-349, although we award them costs on appeal upon compliance with ARCAP 21. *See* A.R.S. § 12-342.

AMY M. WOOD • Clerk of the Court
FILED: AA