

2011 ("Motion for Summary Judgment") (Doc. # 11). On April 18, 2011, Debtor/Defendant Jessica K. Powell filed Debtor Jessica Powell's Response to Plaintiff's Motion for Summary Judgment ("Response") (Doc. # 12). The Plaintiff filed Plaintiff's Reply in Support of Her Motion for Summary Judgment ("Reply") (Doc. # 13) on April 25, 2011. For the reasons set forth herein, the Court will grant the Motion for Summary Judgment.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Debtor filed a voluntary petition pursuant to chapter 7 of the Bankruptcy Code on April 19, 2010, which was denominated Case No. 10-41341 ("Main Case"). In Schedule F - Creditors Holding Unsecured Nonpriority Claims, the Debtor listed the Plaintiff as the holder of a "civil judgment" in the approximate amount of \$1,673,582.37. (Main Case, Doc. # 1, Sch. F at 2.) The Debtor was granted a discharge on September 13, 2010, when the Court entered Discharge of Debtor in a Chapter 7 Case (Main Case, Doc. # 14).

On July 29, 2010, the Plaintiff filed Complaint to Deny Dischargeability of Debt ("Complaint") (Doc. # 1). The Plaintiff

represents that she filed a lawsuit in the Mahoning County Court of Common Pleas ("Mahoning Court") against the Debtor and James L. Rounds II for various intentional torts, including assault ("Mahoning Litigation").¹ (Compl. ¶ 12.) The Plaintiff asserts that the Mahoning Court ruled in her favor and awarded damages against the Debtor and Mr. Rounds, jointly and severally, in the amount of \$1,550,000.00, plus court costs ("Mahoning Judgment"), which ruling was memorialized in Judgment Entry filed on October 17, 2008.² (*Id.* ¶ 13.) The Plaintiff requests this Court to find that the Mahoning Judgment is not dischargeable pursuant to 11 U.S.C. § 523(a)(6). (*Id.* at 3.)

The Court notes the following findings of fact and conclusions of law made by the Mahoning Court in the Judgment Entry:

- (1) A bench trial regarding the Mahoning Litigation was conducted on May 29, 2008 ("Bench Trial"). (J. Entry at 1.)
- (2) The Plaintiff and her attorney were present at the Bench Trial. The Debtor and Mr. Rounds failed to appear at the Bench Trial, "despite having been properly notified" of the Bench Trial. (*Id.*)
- (3) "In light of the fact that [the Debtor and Mr. Rounds] previously entered an appearance [in the Mahoning

¹The Mahoning Litigation was denominated Case No. 06 CV 1372.

²A true copy of the original Judgment Entry, as certified to by the Clerk of Courts for the Mahoning Court, is attached to the Motion for Summary Judgment as Plaintiff's Exhibit 4.

Litigation], the Magistrate proceeded to trial upon the merits in their absence." (*Id.*)

- (4) On July 20, 2005, an argument between the Debtor and the Plaintiff, among others, occurred at the Plaintiff's residence. The Debtor left the Plaintiff's premises following the argument, but returned with Mr. Rounds approximately forty-five minutes later. (*Id.* at 1-2.)
- (5) Mr. Rounds exited the vehicle in which he and the Debtor arrived, approached the Plaintiff and threatened her family. The Plaintiff repeatedly asked Mr. Rounds to leave, but he ignored her requests. Mr. Rounds proceeded to the front porch of the Plaintiff's residence and "violently struck [the Plaintiff] in the left eye with a 'shiny object' and without provocation. The force of the blow caused Plaintiff to fall to the ground momentarily losing consciousness. At that point, Mr. Rounds and [the Debtor] left Plaintiff's residence." (*Id.* at 2.)
- (6) As a result of being struck by Mr. Rounds, the Plaintiff
 - (a) is permanently blind in her left eye, as testified to at the Bench Trial by the Plaintiff's treating physician;
 - (b) experiences severe sinus headaches; and
 - (c) suffers from greatly reduced mobility as a result of not having depth perception or peripheral vision in her left eye.(*Id.*)
- (7) Mr. Rounds pled guilty to felonious assault and was

sentenced to a period of incarceration. (*Id.* at 3.)

(8) At the Bench Trial, the Plaintiff testified that the Debtor was "responsible for transporting or directing Rounds to Plaintiff's residence. Plaintiff did not know Rounds prior to this incident, had never met him, nor had he ever been to her home. . . . [A]s Mr. Rounds exited the vehicle and approached [the Plaintiff's] home, [the Debtor] repeatedly urged him on in his course of conduct." (*Id.*)

(9) The Mahoning Court found: "It is evident that [the Debtor] was the individual responsible for contacting Rounds, and accompanying him to Plaintiff's residence. . . . [The Debtor] was, at all times, aiding, abetting and acting in concert with Rounds in bringing about the assault of Plaintiff and this subsequent damage. Along with Rounds, her conduct in this instance was at all times intentional, malicious and motivated by malice, ill will and evil intent." (*Id.*)

(10) The Mahoning Court further concluded: "All of Plaintiff's injuries were directly and proximately caused by the conduct of [the Debtor and Mr. Rounds] in perpetrating this vicious and cowardly act of violence." (*Id.* at 4.)

(11) The Mahoning Court awarded the Plaintiff (a) compensatory damages in the amount of \$750,000.00 against the Debtor and Mr. Rounds, jointly and severally; (b) punitive

damages in the amount of \$500,000.00 against the Debtor and Mr. Rounds, jointly and severally; and (c) attorney's fees³ in the amount of \$300,000.00 against the Debtor and Mr. Rounds, jointly and severally. (*Id.* at 4-5.)

On August 29, 2010, the Debtor filed Answer, Affirmative Defenses and Counterclaim [sic] of Defendant-Debtor Jessica K. Powell ("Answer") (Doc. # 6).⁴ The Debtor asserts that the Complaint fails to state a claim upon which relief can be granted and that the exception to discharge in § 523(a)(6) is not applicable to the Mahoning Judgment. The Plaintiff filed Plaintiff's Response to Counterclaim (Doc. # 8) on September 2, 2010.

In the Motion for Summary Judgment, the Plaintiff alleges that (i) collateral estoppel precludes the Debtor from challenging the Mahoning Judgment in this Court; and (ii) the Judgment Entry contains sufficient findings of fact to except the Mahoning Judgment from discharge pursuant to § 523(a)(6). (Mot. for Summ. J. at 1-2.) The Debtor contends that summary judgment is not proper because genuine issues of material fact exist regarding whether the Mahoning Judgment was actually litigated and whether the Debtor caused willful and malicious injury to the Plaintiff. (Resp. at 9-10.)

³The Mahoning Court held an evidentiary hearing on July 8, 2008, regarding the Plaintiff's request for attorney's fees. (J. Entry at 4.) Counsel for the Plaintiff appeared at the evidentiary hearing, but the Debtor and Mr. Rounds failed to appear. (*Id.*)

⁴Despite its caption, the Answer does not contain a counterclaim. (See Ans.) At a telephonic status conference on February 28, 2011, counsel for the Debtor, James A. Melone, Esq., conceded that any purported counterclaim in the Answer is merely a defense to the Complaint.

II. STANDARD OF REVIEW

The procedure for granting summary judgment is governed by Federal Rule of Civil Procedure 56(a), made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7056. See FED. R. BANKR. P. 7056 (West 2010). Rule 56(a) states, in pertinent part, "The 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 (West 2011). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A fact is material if it could affect the determination of the underlying action. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is genuine if a rational trier of fact could find in favor of either party on the issue. *Id.* at 248-49; *SPC Plastics Corp. v. Griffith (In re Structurlite Plastics Corp.)*, 224 B.R. 27, 30 (B.A.P. 6th Cir. 1998). Thus, summary judgment is inappropriate "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

In a motion for summary judgment, the moving party bears the initial burden of establishing the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. The burden then shifts to the nonmoving party to demonstrate the existence of a genuine

dispute. *Anderson*, 477 U.S. at 248-49. In response to a proper motion for summary judgment, the nonmoving party must present evidence upon which a reasonable trier of fact could rule in its favor. *Id.* at 252. The evidence must be viewed in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

III. LEGAL STANDARD

A. Section 523(a)(6).

Section 523(a), which excepts various categories of debt from discharge, states in subsection (a)(6):

(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[.]

11 U.S.C. § 523 (West 2010). The plaintiff bears the burden of proving by a preponderance of the evidence that a debt is excepted from discharge under § 523(a). *Meyers v. I.R.S. (In re Meyers)*, 196 F.3d 622, 624 (6th Cir. 1999) (citing *Grogan v. Garner*, 498 U.S. 279, 290-91 (1991)).

The plain language of § 523(a)(6) requires the plaintiff to establish that the injury is both willful and malicious. *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 463 (6th Cir. 1999). The Supreme Court has held that the inclusion of the term "willful" in § 523(a)(6) requires "deliberate or intentional injury, not

merely a deliberate or intentional act that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998) (emphasis in original). The Sixth Circuit Court of Appeals expanded the definition of willfulness to include the debtor's belief that injury is "substantially certain to result" from the debtor's actions. *Markowitz*, 190 F.3d at 464 (quoting Restatement (Second) of Torts § 8A at 15 (1964)). The element of "malicious injury" in § 523(a)(6) requires action "taken in conscious disregard of the debtor's duties or without just cause or excuse." *Superior Metal Prods. v. Martin (In re Martin)*, 321 B.R. 437, 441-42 (Bankr. N.D. Ohio 2004) (citing *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir. 1986)).

As a result, to prevail in a § 523(a)(6) action, the plaintiff must establish by a preponderance of the evidence: (i) the debtor caused injury to the plaintiff or the plaintiff's property; (ii) the debtor intended to cause such injury or the debtor's actions were substantially certain to cause such injury; and (iii) the debtor acted in conscious disregard of the debtor's duties or without just cause or excuse. *Palik v. Sexton (In re Sexton)*, 342 B.R. 522, 530 (Bankr. N.D. Ohio 2006). Section 523(a)(6) "is aimed at the type of both socially and morally reprehensible conduct that is not deserving of the fresh-start policy which underlies the Bankruptcy Code." *Martin*, 321 B.R. at 440.

B. Collateral Estoppel.

The doctrine of collateral estoppel, or issue preclusion,

"precludes relitigation of issues of fact or law actually litigated and decided in a prior action between the same parties and necessary to the judgment, even if decided as part of a different claim or cause of action.'" *Markowitz*, 190 F.3d at 461 (quoting *Sanders Confectionery Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 480 (6th Cir. 1992)). The Supreme Court has held that collateral estoppel applies in nondischargeability proceedings. *Gonzalez v. Moffitt (In re Moffitt)*, 252 B.R. 916, 920-21 (B.A.P. 6th Cir. 2000) (citing *Grogan v. Garner*, 498 U.S. 279, 285 n.11 (1991)). Pursuant to 28 U.S.C. § 1738, federal courts "must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which that judgment was rendered." *Migra v. Warren City School Dist. Bd. Of Educ.*, 465 U.S. 75, 81 (1984). "Collateral estoppel will apply where (1) the law of collateral estoppel in the state in which the issue was litigated would preclude relitigation of such issue, and (2) the issue was fully and fairly litigated in state court." *Markowitz*, 190 F.3d at 461 (citing 28 U.S.C.A. § 1738 (West 1994)).

In Ohio, the following four elements must be established to assert collateral estoppel:

(1) The party against whom estoppel is sought was a party or in privity with a party to the prior action;

(2) There was a final judgment on the merits in the previous case after a full and fair opportunity to litigate the issue;

(3) The issue must have been admitted or actually tried and decided and must be necessary to the final judgment; and

(4) The issue must have been identical to the issue involved in the prior suit."

Cashelmarra Villas Ltd. P'Ship v. DiBenedetto, 623 N.E.2d 213, 215-16 (Ohio Ct. App. 1993) (quoting *Monahan v. Eagle Picher Indus., Inc.*, 486 N.E.2d 1165, 1168 (Ohio Ct. App. 1984)). "The burden of pleading and proving the identity of the issues currently presented and the issues previously decided rests on the party asserting the estoppel." *Am. Fiber Sys., Inc. v. Levin*, 928 N.E.2d 695, 701 (Ohio 2010) (citing *Goodson v. McDonough Power Equip., Inc.*, 443 N.E.2d 978, 983 (Ohio 1983)).

IV. ANALYSIS

A. Collateral Estoppel and § 523(a)(6).

As the party asserting the doctrine of collateral estoppel, the Plaintiff must establish that the four elements of collateral estoppel under Ohio law are present with respect to each material element of this § 523(a)(6) action. *Palik v. Sexton (In re Sexton)*, 342 B.R. 522, 532 (Bankr. N.D. Ohio 2006). As set forth below, this Court finds that the Plaintiff has satisfied each of the four elements of collateral estoppel and, thus, this Court is required to accept the findings of fact and conclusions of law reached by the Mahoning Court.

1. Identity of Parties.

Because the Plaintiff and the Debtor were parties to the Mahoning Litigation, the first element – identity or privity of parties – is satisfied without the need for evidence or

argument. *See id.*

2. Final Judgment on the Merits After a Full and Fair Opportunity to Litigate the Issue.

The second element requires the Plaintiff to establish that the Mahoning Judgment is a final judgment on the merits and that the Debtor was provided a full and fair opportunity to litigate the Mahoning Judgment. *DiBenedetto*, 623 N.E.2d at 215-16 (quoting *Monahan*, 486 N.E.2d at 1168). The Plaintiff contends that the Debtor had a full and fair opportunity to litigate the Mahoning Judgment because the Debtor (i) filed an answer in the Mahoning Litigation;⁵ (ii) fully participated in various stages of the Mahoning Litigation, including discovery, status conferences, pretrial hearings and settlement discussions; (iii) had counsel until the eve of the Bench Trial;⁶ and (iv) received notice of the Bench Trial, as recited in the Judgment Entry. (Mot. for Summ. J. at 2-4, 7.) The Plaintiff also alleges that the Judgment Entry was a final appealable order, which the Debtor never appealed or otherwise contested in any manner. (*Id.* at 7.) In response, the Debtor states that she was not granted a full and fair opportunity to litigate the Mahoning Judgment because, “[A]t the time and date of the [Bench Trial], [the Debtor] was not represented by counsel,

⁵A copy of Answer to Plaintiff’s Complaint, filed by the Debtor in the Mahoning Litigation on May 18, 2006, is attached to the Motion for Summary Judgment as Plaintiff’s Exhibit 2.

⁶A judgment entry granting James E. Lanzo, Esq. permission to withdraw as counsel for the Debtor and Mr. Rounds in the Mahoning Litigation is attached to the Motion for Summary Judgment as Plaintiff’s Exhibit 3. The judgment entry was filed on May 22, 2008, which was seven days prior to the Bench Trial.

and was not notified of the hearing date. Thus, [the Debtor] was not given an adequate opportunity to offer a defense to Plaintiff's allegations." (Resp. at 9.) The Debtor does not dispute that the Mahoning Judgment is a final judgment. (See *id.* at 9-12.)

The Judgment Entry directly contradicts the Debtor's arguments that she did not have a full and fair opportunity to litigate the Mahoning Judgment and that the Mahoning Judgment was not decided on the merits. The Mahoning Court found:

This cause came on for bench trial this 29th day of May, 2008 before the Magistrate. Present was the Plaintiff and her attorney. [The Debtor and Mr. Rounds] failed to appear despite having been properly notified of these proceedings. In light of the fact that [the Debtor and Mr. Rounds] previously entered an appearance herein, the Magistrate proceeded to trial upon the merits in their absence.

(J. Entry at 1 (emphasis added).) Because the Mahoning Court found that the Debtor was "properly notified" of the Bench Trial, which "proceeded to trial upon the merits," the Debtor's arguments to the contrary are without merit. Furthermore, the Debtor's contention that she was not represented by counsel on the date of the Bench Trial is not determinative of whether the Debtor had the opportunity to litigate the Mahoning Judgment. As a consequence, this Court finds that the Debtor was provided a full and fair opportunity to litigate the Mahoning Judgment and that the Mahoning Judgment is a final judgment on the merits.

3. The Issue Necessary to the Final Judgment Was Actually Tried and Decided.

Pursuant to the third element of the collateral estoppel test,

the Plaintiff must demonstrate that the issue before this Court was actually tried and decided by the Mahoning Court and was necessary to the Mahoning Judgment. *Cashelmara Villas Ltd. P'Ship v. DiBenedetto*, 623 N.E.2d 213, 215-16 (Ohio Ct. App. 1993) (quoting *Monahan v. Eagle Picher Indus., Inc.*, 486 N.E.2d 1165, 1168 (Ohio Ct. App. 1984)). The Debtor does not dispute that the Mahoning Litigation was actually tried at the Bench Trial on May 29, 2008, and decided by the Mahoning Court in the Judgment Entry. (See Resp.) Also, the Judgment Entry states that the Mahoning Litigation "proceeded to trial upon the merits" and describes evidence presented by the Plaintiff, including testimony by the Plaintiff, the Plaintiff's neighbor and the Plaintiff's treating physician. (J. Entry at 1-4.) Therefore, this Court finds that the Mahoning Litigation was actually tried and decided by the Mahoning Court.

Next, the Court must determine whether resolution of the issue before this Court was necessary for the Mahoning Court to enter the Mahoning Judgment. To prevail in this § 523(a)(6) proceeding, the Plaintiff is required to establish that (i) the Debtor caused injury to the Plaintiff; (ii) the Debtor intended to cause such injury or the Debtor's actions were substantially certain to cause such injury – *i.e.*, the injury was willful; and (iii) the Debtor acted in conscious disregard of her duties or without just cause or excuse – *i.e.*, the injury was malicious. *Palik v. Sexton (In re Sexton)*, 342 B.R. 522, 530 (Bankr. N.D. Ohio 2006). The Court will address each of these requirements in sequence.

a. Determination That the Debtor Caused the Plaintiff Injury Was Necessary to the Mahoning Judgment.

The Mahoning Court found that “[a]ll of Plaintiff’s injuries were directly and proximately caused by the conduct of [the Debtor and Mr. Rounds].” (J. Entry at 4.) Furthermore, the Mahoning Court awarded the Plaintiff, *inter alia*, compensatory damages in the amount of \$750,000.00 and punitive damages in the amount of \$500,000.00 against the Debtor and Mr. Rounds, jointly and severally. (*Id.*) In order to award damages in favor of the Plaintiff, the Mahoning Court necessarily determined that the Debtor caused injury to the Plaintiff.

The Debtor repeatedly asserts that Mr. Rounds, rather than the Debtor, caused the Plaintiff’s injuries. (Resp. at 9-12.) The Debtor states:

[The Debtor] did not physically assault Plaintiff in any manner, nor did she plan, scheme, incite, or instigate the attack perpetrated by Mr. Rounds. . . . Unlike Mr. Rounds, [the Debtor] was not convicted of felonious assault, or found to have knowingly caused serious physical harm to Plaintiff. . . . [The Debtor] did not willfully or maliciously cause Plaintiff’s injury; rather Mr. Rounds caused Plaintiff’s injury.

(*Id.* at 9-10.) Hence, the Debtor suggests that the Mahoning Judgment is not founded upon injuries caused by the Debtor.

The Bankruptcy Court for the Northern District of Ohio addressed a similar argument in *H. Park Partners, LLC v. Frick (In re Frick)*, 427 B.R. 627 (Bankr. N.D. Ohio 2010). In *Frick*, the debtor argued that no evidence was presented during the state court proceeding to establish that the debtor, as opposed to third

parties, actually caused damage to the plaintiff's property. *Id.* at 634-35. Thus, the debtor asserted that his debt to the plaintiff was dischargeable because § 523(a)(6) specifies that the injury must be caused "by the debtor." *Id.* at 635. The Bankruptcy Court rejected this argument and stated:

[T]here is no requirement in § 523(a)(6) that a debtor actually be the one who physically occasions damage to a creditor or to a creditor's property. Instead, liability for a "willful" and "malicious" injury may be imposed under § 523(a)(6) when the debtor directs or actively encourages another person to commit a wrongful act. This was the situation determined in the Parties' state-court litigation.

Id. (internal citations omitted). The Bankruptcy Court emphasized the state court's conclusion that third parties were acting under the direction of the debtor, "with the liability against the Debtor not being imputed to him vicariously, but rather being assessed against him personally." *Id.* The Bankruptcy Court concluded: "[T]he fact that the Debtor did not, himself, physically occasion damage to Plaintiff's property provides no defense to the application of the collateral estoppel doctrine to this adversary proceeding." *Id.*

Similar to the facts in *Frick*, the Mahoning Court determined that the Debtor was personally liable to the Plaintiff for the Plaintiff's injuries. Based upon the Plaintiff's testimony that the Debtor "was the individual responsible for transporting or directing Rounds to Plaintiff's residence[,] contacting Rounds, . . . [and] repeatedly urged him on in his course of conduct," the Mahoning Court determined that the Debtor "was, at all times, aiding,

abetting and acting in concert with Rounds in bringing about the assault of Plaintiff and this subsequent damage." (J. Entry at 3.) The fact that the Debtor did not herself assault the Plaintiff is without consequence. As stated above, the Debtor's contention that only Mr. Rounds caused injury to the Plaintiff was rejected by the Mahoning Court when it awarded damages against the Debtor. As a result, this Court finds that the holding by the Mahoning Court that the Debtor caused injury to the Plaintiff was necessary to the Mahoning Judgment.

b. Determination That the Debtor Willfully and Maliciously Caused Injury to the Plaintiff Was Necessary to the Mahoning Judgment.

The Debtor alleges that her intent to injure the Plaintiff was not a material element of the Mahoning Judgment and, therefore, this Court is precluded from applying the doctrine of collateral estoppel. (Resp. at 11 (quoting *Palik v. Sexton (In re Sexton)*, 342 B.R. 522, 531 (Bankr. N.D. Ohio 2006)).) More specifically, the Debtor argues that, although the Mahoning Court found that the Debtor's actions were willful and malicious, the Mahoning Court did not find that the Debtor intended to cause injury to the Plaintiff or that the Debtor believed her actions were substantially certain to cause injury to the Plaintiff, as required pursuant to § 523(a)(6). (*Id.* at 10 (citing *Sexton*, 342 B.R. at 530).) The Plaintiff asserts that, in order to award punitive damages under Ohio law, the Mahoning Court was required to find that the Debtor intended to cause injury to the Plaintiff. (Reply at 4-5 (citing

Preston v. Murty, 512 N.E.2d 1174 (Ohio 1987)).)

Based upon the express terms of the Judgment Entry, the Debtor's argument fails. The Mahoning Court stated: (i) "[a]ll of Plaintiff's injuries were directly and proximately caused by the conduct of [the Debtor and Mr. Rounds];" (ii) the Debtor "was, at all times, aiding, abetting and acting in concert with Rounds in bringing about the assault of Plaintiff and this subsequent damage;" and (iii) the Debtor's "conduct in this instance was at all times intentional, malicious and motivated by malice, ill will and evil intent." (J. Entry at 3-4.) Thus, the Mahoning Court concluded that the Debtor's actions, which were at all times intentional and motivated by malice, ill will and evil intent, caused the Plaintiff's injuries. This Court finds that these conclusions by the Mahoning Court equate to a finding that the Debtor intended to cause injury to the Plaintiff or, at a minimum, that the Debtor believed her malicious conduct was substantially certain to result in injury to the Plaintiff.

The Court must next determine whether the Mahoning Court's finding that the Debtor willfully and maliciously caused injury to the Plaintiff was necessary to the Mahoning Judgment. In its Judgment Entry, the Mahoning Court recognized that Ohio Revised Code § 2315.21 governs the award of punitive damages in tort actions. (*Id.* at 3-4.) Ohio Revised Code § 2315.21(C) states:

(C) Subject to division (E) of this section, punitive or exemplary damages are not recoverable from a defendant in question in a tort action unless both of the following apply:

(1) The actions or omissions of that defendant demonstrate malice or aggravated or egregious fraud, or that defendant as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate.

* * *

O.R.C. § 2315.21 (Lexis 2011) (emphasis added). Neither fraud nor principal-agent liability served as a basis for the Mahoning Judgment. (See J. Entry.) Accordingly, the Mahoning Court was required to find that the Debtor's conduct exhibited malice in order to award punitive damages.

Malice falls within two general categories, which overlap in certain circumstances. *Preston v. Murty*, 512 N.E.2d 1174, 1175 (Ohio 1987). The Supreme Court of Ohio has held:

Actual malice, necessary for an award of punitive damages, is (1) that state of mind under which a person's conduct is characterized by hatred, ill will or a spirit of revenge, or (2) a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm.

Id. at 1174, syllabus (emphasis in original). "Since punitive damages are assessed for punishment and not compensation, a positive element of conscious wrongdoing is always required. This element has been termed conscious, deliberate or intentional. It requires the party to possess knowledge of the harm that might be caused by his behavior." *Id.* at 1176.

The second general category of malice, which can support an award of punitive damages, is an intentional disregard for the safety of others that has a great probability of causing substantial harm. *Id.* at 1174, syllabus, 1176. This category of malice is

materially equivalent to the second form of "willful injury," as that term is used in § 523(a)(6) – *i.e.*, the debtor's belief that injury is substantially certain to result from the debtor's actions. See *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 463 (6th Cir. 1999) (quoting Restatement (Second) of Torts § 8A at 15 (1964)). Therefore, the determination that the Debtor willfully caused injury to the Plaintiff was necessary to the Mahoning Court's award of punitive damages and, as a result, the Mahoning Judgment. As a consequence, the third element of collateral estoppel is satisfied.

4. Identical Issue in Both Proceedings.

The fourth element of collateral estoppel requires the Plaintiff to prove that the issue before this Court is identical to the issue in the Mahoning Litigation. *Cashelmara Villas Ltd. P'Ship v. DiBenedetto*, 623 N.E.2d 213, 215-16 (Ohio Ct. App. 1993) (quoting *Monahan v. Eagle Picher Indus., Inc.*, 486 N.E.2d 1165, 1168 (Ohio Ct. App. 1984)). In the Mahoning Litigation, the issue was whether the Debtor and Mr. Rounds were liable to the Plaintiff for a variety of intentional torts, including assault. (See J. Entry.) As stated above, the Mahoning Court awarded the Plaintiff punitive damages and, thus, the issue in the Mahoning Litigation was, at least in part, whether the Debtor caused the Plaintiff injury and whether the Debtor did so intentionally (*i.e.*, willfully) and maliciously. The issue before this Court is whether, pursuant to § 523(a)(6), the Mahoning Judgment is a debt for willful and malicious injury caused

by the Debtor – precisely the issue addressed in the Mahoning Litigation. Accordingly, this Court finds that the Plaintiff has satisfied the fourth and final element of the collateral estoppel doctrine.

B. Summary Judgment.

The Court must also determine if summary judgment in favor of the Plaintiff is warranted. The burden is upon the Plaintiff to establish that there is no genuine issue of material fact and that she is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The Plaintiff argues that summary judgment is proper because the material facts necessary to resolve this proceeding were decided by the Mahoning Court. (Mot. for Summ. J. at 1-2.) This Court agrees.

As stated *supra* at 15-20, the Mahoning Court expressly found that the Debtor willfully and maliciously caused injury to the Plaintiff. In addition, the Debtor's contention that she did not intend to cause the Plaintiff's injuries was rejected by the Mahoning Court. (See *supra* at 17-18.) Having concluded that this Court is bound by the findings of fact reached by the Mahoning Court (see *supra* at 11-21), this Court finds that there is no genuine dispute that the Mahoning Judgment is a debt for willful and malicious injury caused by the Debtor and that the Plaintiff is entitled to judgment as a matter of law. The Mahoning Judgment is not dischargeable pursuant to § 523(a)(6). As a consequence, this Court will grant the Plaintiff's Motion for Summary Judgment.

V. CONCLUSION

The Mahoning Court determined all issues of material fact by concluding: (i) the Debtor caused injury to the Plaintiff; (ii) the Debtor intended to cause such injury or, at a minimum, the Debtor's actions were substantially certain to cause such injury; and (iii) the Debtor's actions were malicious. Pursuant to Ohio law, collateral estoppel precludes this Court from determining issues of fact and conclusions of law reached by the Mahoning Court in the Mahoning Litigation because: (i) the Debtor was a defendant in the Mahoning Litigation, which resulted in a final judgment on the merits; (ii) the Debtor was provided a full and fair opportunity to litigate the Mahoning Judgment; (iii) the issue of whether the Debtor willfully and maliciously caused injury to the Plaintiff was actually tried and decided by the Mahoning Court and was necessary to the Mahoning Judgment; and (iv) the issue in (iii), above, is identical to the issue presently before this Court.

Based upon the findings by the Mahoning Court, the Plaintiff is entitled to judgment as a matter of law. As a consequence, the Mahoning Judgment is not dischargeable pursuant to 11 U.S.C. § 523(a)(6). This Court will grant the Plaintiff's Motion for Summary Judgment.

An appropriate order will follow.

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2011, Debtor/Defendant Jessica K. Powell filed Debtor Jessica Powell's Response to Plaintiff's Motion for Summary Judgment (Doc. # 12). The Plaintiff filed Plaintiff's Reply in Support of Her Motion for Summary Judgment (Doc. # 13) on April 25, 2011.

For the reasons set forth in this Court's Memorandum Opinion Regarding Plaintiff's Motion for Summary Judgment entered on this date, the Court hereby:

- (1) Finds that, pursuant to the doctrine of collateral estoppel, this Court must accept the findings of fact and conclusions of law reached by the Mahoning Court in the Mahoning Litigation;
- (2) Finds that there is no genuine issue of material fact in the instant proceeding;
- (3) Finds that the Plaintiff is entitled to judgment as a matter of law;
- (4) Finds that the Mahoning Judgment is not dischargeable pursuant to 11 U.S.C. § 523(a)(6); and
- (5) Grants the Plaintiff's Motion for Summary Judgment.

IT IS SO ORDERED.

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