

United States Bankruptcy Court
 Eastern District Of Washington

In Re:)		
)		
DAVID WALLACE BAYS,)	Main Case	01-05127
)	Number:	
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Debtor(s).)		
LINDA BAYS; KELLY CASE ,)	Adversary	A03-00237
)	Number:	
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)		
Plaintiff(s))		
)		
vs.)		
DAVID BAYS; DOUG LAMBARTH)		
and JANE DOE LAMBARTH;)		
JOE ESPOSITO and JANE DOE)		
ESPOSITO; GARY STENZEL)		
and JANE DOE ESPOSITO;)		
PAUL BASTINE and JANE DOE)		
BASTINE; JOE WITTSTOCK)		
and JANE DOE WITTSTOCK;)		
DAVID HARDY and JANE DOE)		
HARDY; SPOKANE COUNTY)		
COURT,)		
)		
)		
Defendant(s))	DECISION RE: LINDA BAYS' CAUSE OF	
)	ACTION FOR OUTRAGE (INTENTIONAL	
)	INFLICTION OF EMOTIONAL DISTRESS)	
)	AGAINST DAVID BAYS	

FILED

AUG 05 2008

U.S. BANKRUPTCY COURT
 EASTERN DISTRICT OF WASHINGTON

This matter comes before the court upon Motion for Summary judgment. The Plaintiffs Linda Bays and Kelly Case, have filed an adversary proceeding containing multiple counts. Parties to this adversary proceeding have filed multiple motions for summary judgment. The court has heard and disposed of a number of these motions.

The issue before the court in this decision is Linda Bays' cause

1 of action for outrage (intentional infliction of emotional distress)
2 against David Bays. Both parties have moved for summary judgment.

3 The record in the case is extensive. The court has made numerous
4 references to documents filed with the court in the parties various
5 cases. A Reference Code is attached as an appendix to this decision
6 as an aid to find the referenced documents in court files.

7 The court will review the facts and relevant pleadings.

8

9

FACTS AND PLEADINGS

10 1. Linda Bays Mental and Physical Condition

11 Linda Bays describes herself as a person with "several mental
12 handicaps," who was "diagnosed with acute anxiety disorder" which
13 permanently disabled her. [AP 558 ¶ (1)]. When she first met David
14 Bays, she states she advised him of her mental condition. [AP 558 ¶
15 (2), (3) & (4)]. As recently as April 16, 2008, Donna Rosen, Linda
16 Bays' treating psychologist, commented in her affidavit on Ms.
17 Bays' condition "without question there is considerable
18 psychological stress, distress, anxiety and depression and
19 agitation on an ongoing basis. She is also hyper vigilant and
20 paranoid." [AP 585 pg. 2]. Ms. Bays contends that these maladies
21 made her particularly vulnerable to disabling stress at all times
22 relevant to these proceedings.

23 2. History of Marital Discord

24 Linda and David Bays married on March 23, 1998. [AP 503 ¶ 1,
25 pg. 2]. Linda Bays' pleadings alleges a chronicle of marital
26 disharmony. These allegations include irresponsible incurring of
27 debt, failure to provide food, medicine and support, forcing Linda

1 onto welfare in order to sustain herself. There are competing
2 allegations of domestic violence, some of which result in issuance
3 of restraining orders. It was clearly a troubled marriage which at
4 least occasionally involved the intervention of authorities.
5 David Bays filed to dissolve the marriage in April of 2001. A
6 major conflict in the dissolution case was disposition of the
7 Kettle Falls residence.

8 3. The Kettle Falls Residence

9 Linda met David Bays when she was working for him cleaning out
10 his house in Ione, Washington. [AP 585 ¶ (6)]. The job cleaning up
11 the Ione house was a very large job. [AP 585 ¶ (9) & (10)]. Ms.
12 Bays asserts that she had a contract to clean out David's house.
13 "David told me if I would finish his entire house so he could sell
14 it, that he would pay off my home for me as payment." [AP 585 ¶
15 (12)]. It took nearly two years, until May of 1999, for Linda to
16 complete cleaning out David's house, outbuildings and garage. [AP
17 585 ¶ (19)]. During the course of the cleanup, Linda and David
18 married on March 23, 1998. {AP 503 ¶ 1, pg.2). David ultimately
19 mortgaged the Ione house and property and obtained \$152,000.00. [AP
20 585 ¶ (12)]. Linda states, "true to his word, David gave me the
21 money I needed to pay off my home after getting the money out of
22 his house." [AP 585 ¶ (13)]. The house paid off was Linda's home
23 in Kettle Falls, Washington.

24 Linda had been purchasing the Kettle Falls property on a real
25 estate contract from parties named Ferguson. Ms. Bays did not file
26 the statutory warranty deed given in fulfilment of the contract.
27 [AP 585 ¶ (15)]. Instead out of fear that the property would

1 become subject to a judgment lien held by John Troberg, the
2 Ferguson's vendor's interest was transferred to David Bays by
3 document dated June 15, 1999. [AP 585 ¶ (21)]. David Bays was to
4 document Linda's interest by a deed or a satisfaction. [AP 585 ¶s
5 (22), (72) & (73)]. Whether this was ever effectively accomplished
6 is open to question.

7 The dissolution trial was conducted on October 7, 2002. The
8 trial was conducted in Linda Bays' absence, she having sought a
9 continuance on medical grounds, the continuance having been denied.
10 She was unrepresented at the trial. The dissolution court heard
11 evidence and found that Linda Bays owed David Bays a balance of
12 \$52,899.21 principal, \$16,139.15 interest for a balance of
13 \$69,038.36 as of 10/30/02, on the assigned real estate contract on
14 the Kettle Falls house. [DB CT # 61, pg. 7 ¶ 28, pf. 11 ¶ 7, Ex A-
15 1; DB CT #62 pg. 11 ¶ 11, Ex A-1]. The court entered a decree on
16 October 30, 2002. Linda Bays filed post trial motions seeking
17 relief from the decree but the motions were denied. An appeal was
18 filed but after review by the Court of Appeal and the Supreme Court
19 the decree became final. Ms. Bays contends that David Bays
20 intentionally inflicted emotional distress upon her by proceeding
21 to trial knowing of her vulnerable condition, providing false
22 evidence in her absence, thereby unjustly claiming an interest in
23 the Kettle Falls property.

24 4. Allegations of Poisoning

25 As additional grounds for asserting David Bays intentionally
26 inflicted emotional distress upon her, Linda Bays alleges David
27 Bays poisoned her. In July and August of 1999, Linda became

1 suspicious that David was poisoning her. [AP 585, ¶s (24)-(34) pgs.
2 10-13]. Linda underwent tests for lead and arsenic poisoning but
3 the tests proved negative for these poisons. [AP 585, ¶ (33) pg.
4 12-13, Appendix 'A']. Her suspicion however continued in part
5 fueled by her discovery that unknown to her David had taken out a
6 \$1,000,000.00 life insurance policy on her life. [AP 585, ¶ (34)
7 pg. 13, Appendix "B" & "C"]. Despite these suspicions and with
8 some occasional absence, David Bays was allowed to remain in the
9 Kettle Falls residence until October 25, 2000. [AP 585 ¶ (81) pg.
10 28].

11 5. David Bays' Bankruptcy

12 On June 20, 2001, David Bays filed this bankruptcy case.
13 Originally filed as a chapter 13 case, it was shortly converted to
14 chapter 7. Linda Bays alleges that actions taken by David Bays in
15 connection with his bankruptcy are also part of her claim for
16 intentional infliction of emotional distress. These allegations
17 have been discussed at substantial length in this court's "Decision
18 re: Substantial Abuse of Bankruptcy Laws." [AP 503, pgs. 17-23].
19 The court concluded in that decision that Linda Bays had no cause
20 of action against David Bays for abuse of the bankruptcy laws.
21 David Bays was granted a discharge in his case on October 2, 2002.

22 Linda Bays argues that these cumulative actions by David Bays
23 constitute the tort of outrage against her.

24 DISCUSSION

25 The court now turns to discussion of the elements of the tort
26 of outrage.

27 "[O]utrage' and 'intentional infliction of emotional

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1 distress' are synonyms for the same tort. Kloepfel v. Bokor, 149
2 Wash.2d 192 at 194 FN1, 66 P.3d 630 at 631 FN1 (2003). As outlined
3 by the Washington State Supreme Court:

4 The tort of outrage requires the proof of three elements:
5 (1) extreme and outrageous conduct, (2) intentional or
6 reckless infliction of emotional distress, and (3) actual
7 result to plaintiff of severe emotional distress.
8 (Citations omitted).

9 Ibid, 149 Wash.2d at 196, 66 P.3d at 633.

10 The second and third of these elements are at least arguable
11 under the facts presently before the court. Accordingly, the
12 court will focus on whether the conduct complained of here was
13 "extreme and outrageous".

14 It is clear in Washington that the actions triggering a
15 finding of outrage must be very unusual.

16 ... It is the law of this state that liability can be
17 found only where the conduct had been so outrageous in
18 character and so extreme in degree, as to go beyond all
19 possible bounds of decency, and to be regarded as
20 atrocious and utterly intolerable in a civilized
21 community...

22 Woodward v. Steele, 32 Wash. App. 152, at 155-156, 646 P.2d 167, at
23 169-170 (1982).

24 Even if the conduct complained of is truly extreme and
25 outrageous it still might be privileged.

26 ... [T]he conduct although it would otherwise be extreme
27 and outrageous, may be privileged under the
28 circumstances. The actor is never liable, for example,
where he's done no more than insist upon his legal rights
in a permissible way, even though he is well aware that
such insistence is certain to cause emotional distress.

29 Ibid, 32 Wash. App. at 155-156, 646 P.2d at 170 (1982).

30 It is for the court to determine, in the first instance,
31 whether the defendant's conduct may reasonably be
32 regarded as so extreme and outrageous as to permit

1 recovery.

2 Restatement (Second) of Torts, Section 46, Comment h.

3 Ms. Bays' greatest complaint is the disposition of property in
4 the dissolution decree. For example, the dissolution court
5 rejected her contention that she was contractually entitled to the
6 money David Bays paid to pay off the real estate contract on the
7 Kettle Falls residence. Instead the court reinstated the real
8 estate contract with David Bays holding the vendor's interest plus
9 granting David an equitable lien in the residence. Linda Bays
10 contends that this result, along with various other provisions of
11 the decree were outrageous.

12 The disposition of property between spouses litigating in a
13 dissolution is usual. The results of that disposition often result
14 in the emotional distress of at least one of the spouses. Even if
15 one spouse is particularly vulnerable to emotional upset, it does
16 not bar the other spouse from seeking to dissolve the troubled
17 marriage through the courts. The petitioning spouse is doing no
18 more than insisting on his legal rights under the law. Such
19 action is privileged. Woodward v. Steele, 32 Wash. App. at 156,
20 646 P.2d at 170, Restatement (Second) of Torts, Section 46 Comment
21 (g).

22 The bankruptcy court lifted the stay to allow the dissolution
23 trial to proceed. The trial court heard evidence and entered its
24 decree, which in turn was reviewed by the Court of Appeals and
25 further review denied by the Washington Supreme Court. The trial
26 court's decision was affirmed over Linda Bays' objections. If
27 these Washington courts had found David Bays' actions in the

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1 dissolution case outrageous they would not have affirmed the trial
2 court decision. In any event, this court does not find David Bays'
3 conduct in the contested dissolution case sufficient to qualify as
4 extreme and outrageous conduct.

5 Linda Bays also makes a number of allegations relating to
6 David Bays' activities during their marriage, broadly referenced in
7 the "History of Marital Discord" section above. These complaints,
8 including but not limited to irresponsible spending, failure to
9 provide support, and the domestic violence she describes, are not
10 uncommon in a dissolution proceeding. Although reprehensible if
11 proven, they do not rise to the level of extreme behavior "beyond
12 the bounds of decency, or intolerable in a civilized community",
13 required to qualify as outrage. These issues were, or could have
14 been raised in the dissolution case. Although Ms. Bays was not
15 present at the dissolution trial, because of the denial of her
16 request for a continuance, she lost her challenge to that trial and
17 the resulting dissolution decree on appeal. She is bound by the
18 results of that final judgment in the dissolution. Ms. Bays
19 attempts to collaterally attack that judgment through this outrage
20 cause of action fail.

21 Linda Bays pleadings suggest that David Bays was poisoning
22 her. This conduct if substantiated could form a basis for a
23 reasonable person to conclude that David Bays had engaged in
24 outrageous tortious behavior towards her. Linda became suspicious
25 that David was poisoning her in July and August of 1999. These
26 suspicions led her to undergo tests for lead and arsenic poisoning.
27 Although these tests proved negative, her suspicions continued when

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1 she discovered that David had taken out a \$1,000,000.00 life
2 insurance policy on her life. Despite these suspicions David was
3 allowed to continue living in the Kettle Falls residence until
4 October of 2000.

5 Even if Linda's suspicions were grounded in fact, there would
6 be a problem with her basing a successful claim of outrage at this
7 time. The allegations of poisoning all relate to a period of time
8 between the parties' marriage in 1998 and October 2000. David Bays
9 filed his bankruptcy on June 20, 2001. The alleged poisoning took
10 place prior to the bankruptcy and as such is subject to discharge
11 in the bankruptcy case. Poisoning would constitute a "willful and
12 malicious injury" under the terms of 11 U.S.C. Section 523(a)(6).
13 Linda Bays was required to file a complaint objecting to the
14 discharge of these kind of obligations under 11 U.S.C. Section 523
15 (c) within the period prescribed by Federal Rules of Bankruptcy
16 Procedure 4007(c). She did not do so. A discharge was entered in
17 David Bays' case on October 2, 2002. The entry of the discharge
18 in David Bays' case discharged him from any tort liability to Linda
19 Bays for actions taken prior to the filing of his bankruptcy on
20 June 20, 2001.

21 The court has examined at some length allegations of
22 misconduct by David Bays in the bankruptcy case and found that they
23 did not constitute "substantial abuse" of the bankruptcy laws. [AP
24 503 pg. 17-23]. The court now considers whether the allegations of
25 misconduct in the bankruptcy case support a claim of outrage.

26 Ms. Bays claims that David Bays made misrepresentations in his
27 original schedules, failed to give her notice of the bankruptcy,

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1 failed to promptly amend his schedules when directed to by the
2 trustee, instead sought to dismiss the case, mischaracterized his
3 property in the bankruptcy and the dissolution, colluded with the
4 trustee in the drafting of the terms of the dissolution decree; all
5 with the purpose of causing her intentional emotional distress.

6 It should be observed that these complained-of activities all
7 took place in the context of court cases, either in the Bankruptcy
8 or Superior court. The propriety of a number of the matters
9 complained of in the bankruptcy case have yet to be ruled upon.
10 The actions in the dissolution case have been reviewed by the state
11 courts. Although it is possible that outrageous behavior could be
12 found in the prosecution of litigation, the court's review of the
13 actions complained of here in the prosecution of the bankruptcy
14 case do not as a matter of law reach the threshold of outrageous
15 behavior, "atrocious and intolerable in a civilized society".
16 Litigants have a certain freedom in their attempts to enforce their
17 perceived legal rights in litigation. It is to the benefit of
18 society that parties be given greater license in the assertion of
19 their rights when pursuing litigation in the courts than they would
20 have in pursuit of self-help extra judicial remedies. The courts
21 have remedies to police improper activities through their sanction
22 and contempt powers when misconduct is perceived. The conduct
23 complained of here in this bankruptcy case, although possibly
24 sanctionable if proven, do not amount to the extra ordinary conduct
25 necessary to prove the tort of outrage.

26
27 CONCLUSION

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1 Linda Bays' complaints about David Bays' actions are not
2 sufficient to support a claim of outrage. Summary judgment should
3 be granted dismissing Linda Bays' claim of outrage against David
4 Bays.

5 Dated this 5th day of August, 2008.

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8 JOHN A. ROSSMEISSL, Bankruptcy Judge
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APPENDIX

REFERENCE CODE

[AP 480 (XB)]

Adversary Proceeding No. 03-00237 - Docket No.

[DB CT # 1]

David Bays Bankruptcy No. 01-05127, Docket No.