

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF SOUTH DAKOTA**  
ROOM 211  
FEDERAL BUILDING AND U.S. POST OFFICE  
225 SOUTH PIERRE STREET  
PIERRE, SOUTH DAKOTA 57501-2463

**IRVIN N. HOYT**  
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560  
FAX (605) 224-9020

December 6, 2005

Rick A. Mickelson, Esq.  
Attorney for Plaintiff  
300 N. Dakota Ave., Suite 603  
Sioux Falls, South Dakota 57104

Douglas G. Lorenzen, Esq.  
Attorney for Defendant-Debtor  
P.O. Box 84435  
Sioux Falls, South Dakota 57118

Subject: **Stepp v. Fuller**  
**(In re Rebecca K. Fuller)**  
Adv. No. 05-4068  
Chapter 7; Bankr. No. 05-40690

Dear Counsel:

The matter before the Court is Plaintiff Scott Charles Stepp's motion for summary judgment. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, Plaintiff's motion will be granted.

**Facts.** In her answer to Plaintiff's complaint herein, Debtor admitted, *inter alia*, the following facts:

- (1) While a passenger in an automobile being driven by Debtor, Plaintiff sustained serious personal injuries.
- (2) Debtor was cited in the accident for driving under the influence of intoxicants.
- (3) Debtor was subsequently charged with driving under the influence of intoxicants.
- (4) Debtor pled guilty to the charge of driving under the influence of intoxicants.

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- (5) Debtor was sentenced by the Honorable Patricia C. Riepel.
- (6) Plaintiff has commenced a civil action in state court to recover damages from Debtor.

**Dischargeability.** A chapter 7 discharge does not discharge an individual debtor from any debt "for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance[.]" 11 U.S.C. § 523(a)(9).

Section 529(a)(9) of the Bankruptcy Code prevents the discharge of any debt for personal injury caused by the Debtor's operation of a motor vehicle, if such operation was unlawful because of the Debtor's intoxication.

*Boone v. Barnes (In re Barnes)*, 266 B.R. 397, 402 (B.A.P. 8<sup>th</sup> Cir. 2001).

**Summary Judgment.** Summary judgment is appropriate when "there is no genuine issue [of] material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed.R.Bankr.P. 7056 and Fed.R.Civ.P. 56(c). An issue of material fact is *genuine* if it has a real basis in the record. *Hartnagel v. Norman*, 953 F.2d 394, 395 (8<sup>th</sup> Cir. 1992) (quotes therein). A genuine issue of fact is *material* if it might affect the outcome of the case. *Id.* (quotes therein).

The matter must be viewed in the light most favorable to the party opposing the motion. *F.D.I.C. v. Bell*, 106 F.3d 258, 263 (8<sup>th</sup> Cir. 1997); *Amerinet, Inc. v. Xerox Corp.*, 972 F.2d 1483, 1490 (8<sup>th</sup> Cir. 1992) (quoting therein *Matsushita Elec. Industrial Co. v. Zenith Radio*, 475 U.S. 574, 587-88 (1986), and citations therein). Where motive and intent are at issue, disposition of the matter by summary judgment may be more difficult. *Cf. Amerinet*, 972 F.2d at 1490 (citation omitted).

The movant meets his burden if he shows the record does not contain a genuine issue of material fact and he points out that part of the record that bears out his assertion. *Handeen v. LeMaire*, 112 F.3d 1339, 1346 (8<sup>th</sup> Cir. 1997) (quoting therein *City of Mt. Pleasant v. Associated Electric Coop*, 838 F.2d 268, 273, (8<sup>th</sup> Cir. 1988)). No defense to an insufficient showing is required. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 156 (1970) (citation therein); *Handeen*, 112 F.3d at 1346.

If the movant meets his burden, however, the non movant, to defeat the motion, "must advance specific facts to create a genuine

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issue of material fact for trial." *Bell*, 106 F.3d at 263 (quoting *Rolscreen Co. v. Pella Products of St. Louis, Inc.*, 64 F.3d 1202, 1211 (8<sup>th</sup> Cir. 1995)). The non movant must do more than show there is some metaphysical doubt; he must show he will be able to put on admissible evidence at trial proving his allegations. *Bell*, 106 F.3d 263 (citing *Kiemele v. Soo Line R.R. Co.*, 93 F.3d 472, 474 (8<sup>th</sup> Cir. 1996), and *JRT, Inc. v. TCBY System, Inc.*, 52 F.3d 734, 737 (8<sup>th</sup> Cir. 1995)).

**Discussion.** The relevant facts are not in dispute. Debtor admits Plaintiff sustained serious personal injuries while a passenger in an automobile being driven by Debtor. Debtor also admits she was cited for, was charged with, pled guilty to, was convicted of, and was sentenced for driving under the influence of intoxicants. Plaintiff has met his burden of showing the record does not contain a genuine issue of material fact and pointing out the part of the record that bears out his assertion.

Debtor must therefore advance specific facts to create a genuine issue of material fact for trial. In her response to Plaintiff's motion for summary judgment, Debtor argues the Court cannot grant summary judgment because Plaintiff has failed to state a "specific dollar amount of damages." The Court disagrees. Section 523(a)(9) requires only a "debt." The bankruptcy code defines a debt as "liability on a claim." 11 U.S.C. § 101(12). The bankruptcy code defines a claim as a -

right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured . . . .

11 U.S.C. § 101(5)(A). Plaintiff's claim may be unliquidated and disputed, but it is clearly a claim and thus clearly a debt.<sup>1</sup>

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<sup>1</sup> Any argument that Plaintiff's claim must be reduced to judgment to be nondischargeable was disposed of by the 1990 amendment to § 523(a)(9).

The original language of § 523(a)(9) excepted from discharge a debt "to the extent that such debt arises from a judgment or consent decree . . . as a result of the debtor's operation of a motor vehicle while legally intoxicated." Congress subsequently rewrote subsection (a)(9) to except from discharge a debt "for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated. The Congressional Record explains that the new language was intended to close the



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South Dakota  
Southern (Sioux Falls)  
Tue Dec 6 12:49:29 CST 2005

Fuller Rebecca K.  
1208 East 16th St. #3  
Sioux Falls, SD 57104

Hoyt Irvin N.

Lorenzen Douglas G.  
PO Box 84435  
Sioux Falls, SD 57118

Mickelson Rick A.  
300 N. Dakota Ave., Suite 603  
Sioux Falls, SD 57104-6040

Stepp Scott Charles  
Bad Address (9/22/05)

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