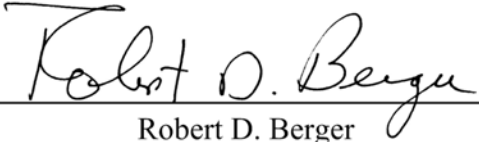


The relief described hereinbelow is SO ORDERED.

SIGNED this 31st day of October, 2025.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

Case No. 24-20704
Chapter 7

NICOLE ROCHELLE REED,

Debtor.

**BECKY BECKER, Administratrix
of the Tobias Becker Estate,**

Adv. No. 24-6018

Plaintiff,

v.

NICOLE ROCHELLE REED,

Defendant.

ORDER DENYING MOTION FOR JUDGMENT ON THE PLEADINGS

Defendant Nicole Reed sexually abused Tobias (“**Toby**”) Becker throughout the summer of 2015. Reed was 39 years old at the time; Toby had just turned 14. Seven years later, Toby filed a civil action against Reed in Cloud County, Kansas, for three counts of battery and one count of outrageous conduct. On December 13, 2022, while the litigation was still pending, Toby died of an overdose.

Toby’s mother, plaintiff Becky Becker (“**Becker**”), continued Toby’s litigation against Reed as administratrix of his estate. On May 20, 2024, the Cloud County district court entered judgment against Reed on all four counts; awarded Becker \$52,798.38 for medical expenses and \$700,000 for pain, suffering, and mental anguish; and found that Becker was entitled to punitive damages in an amount to be determined on June 10, 2024. Two days before the hearing on punitive damages, Reed filed for bankruptcy under Chapter 7.

In this adversary proceeding, Becker seeks a determination that the Cloud County judgment is excepted from Reed’s Chapter 7 discharge as a debt for willful and malicious injury to Toby under 11 U.S.C. § 523(a)(6). Reed now moves for judgment on the pleadings under Fed. R. Civ. P. 12(c),¹ arguing that Becker’s complaint fails to allege “willful and malicious” injury for purposes of § 523(a)(6).² For the reasons that follow, Reed’s motion will be denied.

¹ Fed. R. Civ. P. 12(c) applies to this adversary proceeding under Fed. R. Bankr. P. 7012(b).

² Mot., ECF 31. A proceeding to determine the dischargeability of a debt arises in a bankruptcy case under 28 U.S.C. § 1334(b) and is a core proceeding under 28 U.S.C. § 157(b)(2)(I). Venue is proper under 28 U.S.C. § 1409(a). Becker appears by attorney Tom Barnes. Reed appears by attorney Joan Lee.

Rule 12(c) can be used to achieve either of two separate objectives. First, a Rule 12(c) motion can be used to seek a substantive, merits disposition of the underlying dispute on grounds that are exposed by an examination of all the pleadings. Second, a Rule 12(c) motion can alternatively be used to press, *post-answer*, three Rule 12 defenses: failure to state a claim, to state a legal defense, or to join a Rule 19(b) required party.

Steven Baicker-McKee & William M. Janssen, *Federal Civil Rules Handbook* 484 (Thomson Reuters 2024) (citations omitted). Reed's motion is the second type: it argues that Becker's complaint fails to state a claim for "willful and malicious" injury. Because Reed's motion argues that Becker's complaint fails to state a claim, the Court will apply the same standard used for a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *See Dyno Nobel v. Steadfast Ins. Co.*, 85 F.4th 1018, 1025 (10th Cir. 2023).

Thus, the Court must "accept as true all well-pleaded factual allegations in the complaint, resolve all reasonable inferences in the plaintiff's favor, and ask whether it is plausible that the plaintiff is entitled to relief." *Dyno Nobel v. Steadfast Ins. Co.*, 85 F.4th 1018, 1025 (10th Cir. 2023). A claim is facially plausible when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct charged. *Id.* (citation omitted). Written documents attached to the complaint as exhibits are considered part of the complaint for purposes of this analysis. *See* Fed. R. Civ. P. 10(c) ("A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.").

Debts “for willful and malicious injury by the debtor to another entity” are excepted from discharge in Chapter 7. *See* 11 U.S.C. § 523(a)(6). “Willful” modifies “injury,” meaning that § 523(a)(6) requires “a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury.” *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998). An injury is “willful” if the debtor desires to cause it or believes that it is substantially certain to occur. *See Panalis v. Moore (In re Moore)*, 357 F.3d 1125, 1129 (10th Cir. 2004) (quoting *Mitsubishi Motors Credit of Am., Inc. v. Longley (In re Longley)*, 235 B.R. 651, 657 (B.A.P. 10th Cir. 1999)). “Malicious” means that the debtor acted “without justification or excuse.” *See Dorr, Bentley & Pecha, CPA’s, P.C. v. Pasek (In re Pasek)*, 983 F.2d 1524, 1527 (10th Cir. 1993); *First Am. Title Ins. Co. v. Smith (In re Smith)*, 618 B.R. 901, 919 (B.A.P. 10th Cir. 2020).

Here, in finding Reed liable on three counts of battery, the Cloud County court reasoned:

The first three claims in the matter are based upon various acts of sexual intercourse or sexual touching between Toby and Nicki throughout the spring and summer of 2015. . . .

This Court finds there was a preponderance of evidence provided to establish an unprivileged touching by Nicki of Toby that was offensive. Although Toby may not have considered the touching offensive at the time, he was a child 14 years of age and unable to give legal consent. Clearly, the touching was intentional. Assuming Nicki did not intend to cause harmful bodily injury to Toby, she is not relieved of responsibility.

An intent to cause offensive bodily contact, which is, to invade another person’s reasonable sense of personal dignity supplies a sufficient state of mind to justify

imposing civil battery liability. McElhaney v. Thomas, 307 Kan. 45, 55, 405 P.3d 1214 (2017). . . .

[italics added] *The issue is not whether [Reed] intended the injury resulting from offensive contact. Rather, the issue is whether the touching was intentional and whether it caused injury.* In the present case, Dr. Stuke provided ample evidence of Toby's mental injury from the sexual touching at such a young age and with an older woman. Dr. Stuke provided testimony regarding development of the brain when such trauma occurs and how that development is delayed or stunted. Toby's wound was not physical, initially. Instead, it manifested as a mental and emotional wound that directly led to physical injuries and the need for treatment in all areas.

. . .

In the present case, it is clear that [Reed] acted intentionally. [Reed] engaged in sexual behavior ranging from sexting to intercourse with Toby. The Court need not belabor the point that such conduct was deliberate and intentional.

. . .

. . . The relationship caused Toby to suffer depression, anxiety, guilt, and a feeling of worthlessness.

. . .

Toby was injured when he was 14 years old. At that time, [Reed] engaged in a sexual relationship with her son's teammate and friend, an adolescent who was more than 20 years her junior. Within months, Toby's character began to change. He became withdrawn and defiant with his parents. He began to abuse legal medication and illegal substances. He became depressed and anxious with feelings of guilt. There were horrific episodes at home in which his parents and younger siblings witnessed multiple attempts at suicide. On the day following an

unsuccessful settlement conference, Toby's pain and suffering overcame his will to live.³

Quoting the italicized language above, Reed argues that Becker's complaint fails to state a claim under § 523(a)(6) because the Cloud County judgment "explicitly does not consider whether Defendant intended to inflict the injury complained of by Plaintiff."⁴ Her argument presumably uses the word "injury"—as did the Cloud County court in the italicized quote—to mean the depression, anxiety, guilt, substance abuse, and suicidal ideation Toby suffered as a result of the sexual abuse.⁵ What Reed's argument fails to acknowledge, though, is that sexual abuse *itself* constitutes an injury—namely, an offensive bodily contact to which a 14-year-old child cannot consent.⁶ *Cf. Pettey v. Belanger ex rel. Belanger*, 232 B.R. 543, 547 (D. Mass. 1999) ("Where intentional torts involving the person are concerned, the act of committing the tort in itself is an injury to the victim."); *id.* (rejecting as "specious" argument that debtor did not intend to cause psychological harm to

³ First Am. Compl. Ex. A at 15-20, ECF 8.

⁴ Mot. ¶ 24, ECF 31; *see id.* ¶ 30.

⁵ The word "injury" is often used as a synonym for "harm." *Cf. injury*, *Garner's Dictionary of Legal Usage* 458 (3d ed. 2011) ("Broadly, an *injury* is any harm, damage, wrong, or injustice."). However, the Restatement uses the term "injury" to mean "the invasion of any legally protected interest of another," whereas "harm" means "the existence of loss or detriment in fact." Restatement (Second) of Torts § 7 (Am. L. Inst. 1965). Some courts consider injury (in the Restatement sense) a separate element of a claim under § 523(a)(6). *See, e.g., First Weber Group, Inc. v. Horsfall*, 738 F.3d 767, 774 (7th Cir. 2013).

⁶ In Kansas, battery is "the unprivileged touching or striking of one person by another, done with the intent of bringing about either a contact or an apprehension of contact that is harmful or offensive." *McElhaney v. Thomas*, 405 P.3d 1214, 1219 (Kan. 2017) (citations omitted).

children he sexually assaulted). Such contact injures the child’s “dignitary interest in the inviolability of his person.” *See McElhaney v. Thomas*, 405 P.3d 1214, 1221 (Kan. 2017) (quoting Restatement (Second) of Torts § 18 cmt. e (Am. L. Inst. 1965)). Because the Cloud County court found that Reed “deliberate[ly]” and “intentionally” engaged in sexual contact with 14-year-old Toby,⁷ and because such contact necessarily injured Toby’s dignitary interest in the inviolability of his person, Reed’s argument fails.

Because Becker’s complaint plausibly alleges that Reed intentionally injured Toby, Reed’s motion for judgment on the pleadings is hereby denied.

IT IS SO ORDERED.

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⁷ First. Am. Compl. Ex. A at 17, ECF 8.