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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

| | | | |
|---------------------------|---|----------------------|------------------|
| In re: |) | BAP No. | ID-11-1060-DJuMk |
| |) | | |
| BARRYNGTON EUGENE SEARCY, |) | Bk. No. | 09-00248-TLM |
| |) | | |
| Debtor. |) | | |
| _____ |) | Adv. No. | 09-06082-TLM |
| BARRYNGTON EUGENE SEARCY, |) | | |
| |) | | |
| Appellant, |) | | |
| |) | | |
| v. |) | O P I N I O N | |
| |) | | |
| ADA COUNTY PROSECUTING |) | | |
| ATTORNEY'S OFFICE, |) | | |
| |) | | |
| Appellee. |) | | |
| _____ |) | | |

Submitted without oral argument
on November 17, 2011

Filed - January 9, 2012

Appeal from the United States Bankruptcy Court
for the District of Idaho

Honorable Terry L. Myers, Chief Bankruptcy Judge, Presiding

Appearances: _____
 Barryngton Eugene Searcy, appellant pro se, on
 brief
 Heather M. McCarthy, Deputy Prosecuting Attorney
 on brief for Appellee Ada County Prosecuting
 Attorney's Office

Before: DUNN, JURY, and MARKELL, Bankruptcy Judges.

1 DUNN, Bankruptcy Judge:

2
3 The appellant Barryngton Eugene Searcy ("Mr. Searcy")
4 appeals the bankruptcy court's Memorandum of Decision
5 ("Memorandum Decision") and Order determining that attorney's
6 fees and costs in the total amount of \$13,172.00, awarded by the
7 Idaho state District Court and Court of Appeals against Mr.
8 Searcy and in favor of the appellee Ada County Prosecuting
9 Attorney's Office ("Ada County"), are excepted from Mr. Searcy's
10 discharge in bankruptcy under 11 U.S.C. §§ 523(a)(7) and (17).¹
11 We AFFIRM.

12 Factual Background

13 The essential facts in this appeal are not in dispute. The
14 following factual narrative is derived from the statement of
15 facts set forth by the bankruptcy court in the Memorandum
16 Decision, supplemented from the Excerpts of Record filed by Ada
17 County and the bankruptcy court's electronic docket for adversary
18 proceeding no. 09-06082-TLM.²

19 Mr. Searcy is a prisoner serving a fixed life sentence in
20 the custody of the Idaho Department of Corrections. On June 14,
21

22
23 ¹ Unless otherwise indicated, all chapter and section
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
25 all "Rule" references are to the Federal Rules of Bankruptcy
26 Procedure, Rules 1001-9037.

27 ² We may take judicial notice of the bankruptcy court's
28 electronic docket and the documents filed therein. See O'Rourke
v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955,
957-58 (9th Cir. 1989); Atwood v. Chase Manhattan Mortg. Co. (In
re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

1 2006, while incarcerated, Mr. Searcy filed a civil complaint in
2 the Ada County District Court ("District Court") against, among
3 others, Ada County and several of its employees (collectively,
4 the "Ada County Defendants"). Mr. Searcy's complaint, as
5 amended, alleged claims for negligence and intentional infliction
6 of emotional distress and sought a declaratory judgment that the
7 Ada County Defendants had violated his rights.

8 On March 17, 2007, the District Court dismissed two of Mr.
9 Searcy's claims pursuant to Idaho R. Civ. P. 12(b)(6) and Idaho
10 Code § 31-3220A(14), concluding that they were frivolous and
11 failed to state a claim upon which relief could be granted. On
12 April 5, 2007, the District Court granted summary judgment in
13 favor of the Ada County Defendants on Mr. Searcy's remaining
14 claims, finding those claims frivolous as well. The Ada County
15 Defendants requested, and the District Court awarded them,
16 attorney's fees under Idaho Code § 31-3220A(16) in the amount of
17 \$7,944.

18 Mr. Searcy appealed the District Court's dismissal and
19 summary judgment orders. In August 2008, the Idaho Court of
20 Appeals ("Court of Appeals") affirmed the District Court's orders
21 and concluded that the District Court's award of attorney's fees
22 to the Ada County Defendants was proper under Idaho Code § 31-
23 3220A(16). Moreover, the Court of Appeals also determined that
24 Mr. Searcy's appeal was frivolous and met the criteria for an
25 award of attorney's fees under both Idaho Code §§ 31-3220A(16)
26 and 12-121. The Court of Appeals awarded the Ada County
27 Defendants attorney's fees of \$5,000 and costs of \$228, for a
28 total award of \$5,228.

1 On February 5, 2009, Mr. Searcy filed a petition for relief
2 under chapter 7. Mr. Searcy disclosed the two awards of
3 attorney's fees and costs in his schedules as claims. Mr. Searcy
4 received his discharge on May 12, 2009.

5 On October 8, 2009, Ada County filed an adversary proceeding
6 complaint ("Complaint") seeking to except from Mr. Searcy's
7 discharge the awards of attorney's fees and costs by the District
8 Court and the Court of Appeals in Ada County's favor under
9 §§ 523(a)(7) and (17). Mr. Searcy filed an answer to the
10 Complaint and asserted three counterclaims against Ada County.
11 Approximately two weeks before the trial, Mr. Searcy withdrew his
12 counterclaims.

13 The Complaint was tried on October 27, 2010. Mr. Searcy
14 stipulated to the amounts of the District Court's judgment for
15 attorney's fees and the Court of Appeals' order awarding
16 attorney's fees and costs, as well as to the admission as
17 evidence of the District Court's judgment and the Court of
18 Appeals' order.

19 After hearing argument, the bankruptcy court took the matter
20 under advisement. On January 12, 2011, the bankruptcy court
21 issued its Memorandum Decision concluding that the attorney's
22 fees and costs awarded to Ada County by the District Court and
23 the Court of Appeals against Mr. Searcy were excepted from his
24 discharge under §§ 523(a)(7) and (17). The bankruptcy court
25 entered its Order excepting Ada County's claims against Mr.
26 Searcy in the amount of \$13,172 from discharge on January 24,
27 2011. Mr. Searcy timely appealed.

1 governmental unit for purposes of the § 523(a)(7) exception to
2 discharge, he argues that his debt to the county is not a "fine,
3 penalty or forfeiture," and he further argues that the awards of
4 attorney's fees and costs to Ada County do in fact constitute
5 "compensation for actual pecuniary loss." We deal with each of
6 these arguments in turn.

7 1. Awards of Attorney's Fees and Costs under Idaho Code
8 § 31-3220A(16) are Penalties

9 We agree with Mr. Searcy that the statutory exceptions to
10 discharge generally are to be construed strictly in favor of the
11 debtor and against those seeking to except debts from the
12 debtor's discharge. See, e.g., Snoke v. Riso (In re Riso), 978
13 F.2d 1151, 1154 (9th Cir. 1992). In interpreting statutes, if
14 the language is clear on its face, that generally ends the
15 matter.

16 The starting point in discerning congressional
17 intent is the existing statutory text, see Hughes
18 Aircraft Co. v. Jacobson, 525 U.S. 432, 438 (1999) . .
19 . . It is well established that "when the statute's
20 language is plain, the sole function of the court-at
21 least where the disposition required by the text is not
22 absurd-is to enforce it according to its terms."

23 Lamie v. United States Trustee, 540 U.S. 526, 534 (2004)
24 (citations omitted).

25 However, where statutory language is ambiguous, courts need
26 to look beyond the specific language of the subject statute to
27 the context in which that language is used and to relevant
28 legislative history, if it exists. "[W]hether a statute is
ambiguous is determined by reference to the language itself, the
specific context in which that language is used, and the broader
context of the statute as a whole." Hough v. Fry (In re Hough),

1 239 B.R. 412, 414 (9th Cir. BAP 1999) (quoting Robinson v. Shell
2 Oil Co., 519 U.S. 337, 341 (1997)).

3 Interpretation of § 523(a) (7) has a history in chapter 7
4 cases. In Kelly v. Robinson, 479 U.S. 36 (1986), the Supreme
5 Court confronted the issue of whether a debtor could discharge a
6 restitution debt to the Connecticut Office of Adult Probation,
7 imposed as a condition of probation in her criminal sentence for
8 wrongful receipt of welfare benefits, in a chapter 7 bankruptcy.
9 In Kelly, while reiterating that the “starting point in every
10 case involving construction of a statute is the language itself”
11 (quoting Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756
12 (1975) (Powell, J., concurring)), the Supreme Court went on to
13 state, “[b]ut the text is only the starting point.” 479 U.S. at
14 43. The court went on to cite the specific language of
15 § 523(a) (7) but further stated that, “[t]his language is subject
16 to interpretation.” Id. at 50. The Supreme Court concluded that
17 § 523(a) (7) “creates a broad exception for all penal sanctions,
18 whether they be denominated fines, penalties, or forfeitures.”
19 Id. at 51 (emphasis added). The Supreme Court ultimately held in
20 Kelly that the debtor’s restitution debt, imposed as a condition
21 of her criminal probation, was not discharged in her chapter 7
22 case, in spite of the fact that the word “restitution” does not
23 appear in § 523(a) (7).

24 In this appeal, the question is whether the § 523(a) (7)
25 exception to discharge covers awards of attorney’s fees and costs
26 under Idaho Code § 31-3220A(16). Although the question of
27 whether a debt is a “fine, penalty or forfeiture” for purposes of
28 § 523(a) (7) is a question of federal law, we look to state law to

1 determine whether the subject debt is such an obligation. See,
2 e.g., Hickman v. Texas (In re Hickman), 260 F.3d 400, 405 (5th
3 Cir. 2001); Colorado v. Jensen (In re Jensen), 395 B.R. 472, 481
4 (Bankr. D. Colo. 2008).

5 Idaho Code § 31-3220A(16) provides:

6 The court shall award reasonable costs and attorney's
7 fees to the defendant or respondent if the court finds
8 that:

9 (a) Any allegation in the prisoner's affidavit is
10 false;

11 (b) The action or any part of the action is frivolous
12 or malicious; or

13 (c) The action or any part of the action is dismissed
14 for failure to state a claim upon which relief can be
15 granted.

16 As noted in the statement of Factual Background above, the
17 District Court dismissed two of Mr. Searcy's claims as frivolous
18 and for failure to state a claim upon which relief could be
19 granted and granted summary judgment on Mr. Searcy's remaining
20 claims, finding them to be frivolous as well. The Court of
21 Appeals affirmed, finding Mr. Searcy's appeal to be frivolous.
22 Mr. Searcy does not contest those determinations. Accordingly,
23 the awards of attorney's fees and costs under Idaho Code § 31-
24 3220A(16) by the District Court and the Court of Appeals
25 concerned in this appeal are supported by findings under Idaho
26 Code § 31-3220A(16) (b) and (c).

27 By its terms, awards of attorney's fees and costs against
28 prisoners under Idaho Code § 31-3220A(16) are mandated based on a
29 prisoner's filing a false affidavit, taking frivolous or
30 malicious actions, or filing unwarranted claims in civil
31 litigation. The "Statement of Purpose" for Idaho Senate Bill
32 1394 ("SB 1394"), the legislation adopting Idaho Code § 31-3220A,

1 states:

2 The purpose of this legislation is to place prison and
3 jail inmates on an equal footing with other civil law
4 litigants concerning claims against the state and
5 counties. Under current law, there are no
6 disincentives for the filing of frivolous claims by
7 inmates. While preserving the right of inmates to file
8 meritorious claims, this legislation imposes financial
9 costs and consequences upon inmates who file frivolous
10 claims and subject the Idaho taxpayers to literally
11 millions of dollars in defense costs. (Emphasis
12 added.)

13 It is true, as argued by Mr. Searcy and as noted by the
14 bankruptcy court, that the terms "fine," "penalty" and
15 "forfeiture" are not found in Idaho Code § 31-3220A(16). Rather,
16 the terms used in the statute's "Statement of Purpose" are
17 "disincentives," "financial costs" and "consequences." The
18 synonyms for "disincentive" noted in Collins Thesaurus are
19 "discouragement, deterrent, impediment, damper, dissuasion,
20 determent." Collins Thesaurus of the English Language (Harper
21 Collins Publishers 2d ed. 2002). However, we agree with the
22 bankruptcy court that use or nonuse of the terms "fine, penalty
23 or forfeiture" is not dispositive. See Kelly v. Robinson, 479
24 U.S. at 51; Forney v. Hoseley (In re Hoseley), 96.1 I.B.C.R. 37,
25 39 (Bankr. D. Idaho 1996).

26 The language of Idaho Code § 31-3220A(16) and its
27 legislative history consistently indicate that the primary
28 purpose of the Idaho statute concerned in this appeal is to deter
29 prisoners from filing frivolous civil litigation, implemented by
30 imposing attorney's fees and costs as a penalty for prisoners'
31 actions in filing and pursuing such litigation. In other words,
32 Idaho Code § 31-3220A(16) imposes a "penalty" on prisoners for
33 filing frivolous lawsuits. See Madison v. Craven, 105 P.3d 705,

1 708-09 (Idaho Ct. App. 2005) ("Section 31-3220A requires inmates
2 to make decisions concerning the merits of their case and
3 discourages them from filing frivolous lawsuits. Discouraging
4 frivolous prisoner litigation and assuring prisoner financial
5 accountability are legitimate concerns of the state and the
6 classification is based on the state's goal of reducing frivolous
7 litigation.").

8 We conclude that Idaho Code § 31-3220A(16) imposes a
9 "penalty" for purposes of our analysis under § 523(a)(7) as a
10 matter of law, and we agree with the bankruptcy court in so
11 determining.

12 2. Awards of Attorney's Fees and Costs under Idaho Code
13 § 31-3220A(16) are not Dischargeable as "Compensation
for Actual Pecuniary Loss"

14 Mr. Searcy further argues that awards under Idaho Code § 31-
15 3220A(16) do not qualify for exception from his discharge because
16 they "serve to compensate 'the defendant or respondent' for their
17 legal expenses incurred during the course of a frivolous civil
18 litigation. The statute is compensatory, rather than penal, in
19 both nature and function." Appellant's Opening Brief at 7. We
20 agree with Mr. Searcy that in effect, if Ada County were to
21 collect any amount of the District Court or Court of Appeals
22 awards of attorney's fees and costs against him, it would be
23 reimbursed for actual expenses. Awards of attorney's fees and
24 costs generally are based on actual out-of-pocket costs. Indeed,
25 a "Fiscal Note" in the legislative history of SB 1394 states,
26 among other things, that,

27 Requiring non-indigent prisoners to pay normal filing
28 fees and costs would increase court revenues.
Subjecting prisoner assets to execution would increase

1 cost recovery by the state and local governments.

2 However, we disagree with Mr. Searcy that cost reimbursement
3 is the essence or primary function of § 31-3220A(16), and that
4 distinction is important.

5 Returning to the Supreme Court's decision in Kelly v.
6 Robinson, the court recognized the differences between the
7 restitution condition to probation considered in that case and
8 traditional fines and penalties. "Unlike traditional fines,
9 restitution is forwarded to the victim, and may be calculated by
10 reference to the amount of harm the offender has caused." Kelly
11 v. Robinson, 479 U.S. at 51-52. However, the Supreme Court
12 concluded that the compensatory aspect of restitution was
13 incidental to the primary purposes served by the restitution
14 remedy in the criminal justice context.

15 The criminal justice system is not operated primarily
16 for the benefit of victims, but for the benefit of
17 society as a whole. Thus, it is concerned not only
18 with punishing the offender, but also with
19 rehabilitating him. Although restitution does resemble
20 a judgment "for the benefit of" the victim, the context
21 in which it is imposed undermines that conclusion. The
22 victim has no control over the amount of restitution
23 awarded or over the decision to award restitution.
24 Moreover, the decision to impose restitution generally
25 does not turn on the victim's injury, but on the penal
26 goals of the State and the situation of the defendant.

27 Id. at 52. Accordingly, the Supreme Court determined that the
28 compensatory aspects of the criminal restitution remedy did not
29 remove it from the § 523(a)(7) exception to discharge. Id. at
30 53.

31 The Ninth Circuit has considered this issue in State Bar of
32 California v. Taggart (In re Taggart), 249 F.3d 987 (9th Cir.
33 2001), and State Bar of California v. Findley (In re Findley),

1 593 F.3d 1048 (9th Cir. 2010).

2 The Taggart decision turned on the Ninth Circuit's
3 interpretation of two statutes under the then-current version of
4 the California Business and Professions Code ("BPC"). BPC
5 § 6086.10 characterized attorney's fees imposed for reimbursement
6 of expenses in attorney disciplinary proceedings as "costs."
7 Taggart, 249 F.3d at 992. However, BPC § 6086.13 authorized the
8 California Supreme Court to award additional "monetary sanctions"
9 in such proceedings. Id. at 991-92. The Ninth Circuit held that
10 the structure of the BPC along with its legislative history
11 indicated that "costs" were not fines or penalties. Id. at 994.
12 The Ninth Circuit noted specifically that all indications were
13 that California did not consider the assessment of costs in the
14 subject context as penal in nature. Id. Accordingly, the costs
15 of the chapter 7 debtor's attorney disciplinary proceeding were
16 not excepted from his discharge under § 523(a)(7). Id.

17 In response to the Taggart decision, the California
18 legislature amended BPC § 6086.10 to add a new subsection (e)
19 that states:

20 In addition to other monetary sanctions as may be
21 ordered by the Supreme Court pursuant to Section
22 6086.13, costs imposed pursuant to this section are
23 penalties, payable to and for the benefit of the State
24 Bar of California, a public corporation created
pursuant to Article VI of the California Constitution,
to promote rehabilitation and to protect the public.
This subdivision is declaratory of existing law.

25 When the Taggart analysis was next considered by the Ninth
26 Circuit in Findley, the court determined that the Taggart
27 decision had been undermined for several reasons: First, the
28 addition of subsection (e) to the statute clarified the

1 legislative intent "'to promote rehabilitation and to protect the
2 public,' rather than to provide compensation." In re Findley,
3 593 F.3d at 1052-53. Second, the distinction between "costs" and
4 "sanctions" was eliminated by the California legislature's
5 designating attorney disciplinary costs as "penalties" imposed
6 "[i]n addition to other monetary sanctions." Id. at 1053 (citing
7 Taggart, 249 F.3d at 991-93). Finally, the draftsman of the
8 amended version of BPC § 6086.10, stated in a declaration
9 submitted for the record that:

10 Section 6086.10(e) was added to the California [BPC] to
11 expressly clarify and re-state the intent of the
12 California Legislature that disciplinary costs are
13 monetary sanctions and are a part of the punishment
14 imposed on California lawyers for professional
15 misconduct by making him or her pay for part of the
16 costs of the proceeding.

17 593 F.3d at 1053 (emphasis added). The Ninth Circuit recognized
18 that even as revised, BPC 6086.10 retained provisions indicating
19 a compensatory purpose. "Section 6086.10 costs continue to
20 reimburse the State Bar for 'actual expenses' and 'reasonable
21 costs' and depend on state expenditures for their imposition."
22 Id. Nevertheless, the Ninth Circuit determined that the
23 overriding penal and rehabilitative functions of the amended
24 version of BPC § 6086.10 precluded discharge in bankruptcy of
25 costs imposed under BPC § 6086.10 pursuant to § 523(a)(7). Id.
26 at 1054.

27 Consistent with the Ninth Circuit's rationale in Findley, a
28 number of other courts have concluded that even where a debt is
intended to help defray government expenses, including attorney's
fees, it may not be dischargeable if the primary purpose for its
imposition is penal. See, e.g., United States Dept. of Hous. &

1 Urban Dev. v. Cost Control Mktg. & Sales Mgmt. of Va., Inc., 64
2 F.3d 920, 928 (4th Cir. 1995); Thompson v. Commonwealth of
3 Virginia (In re Thompson), 16 F.3d 576, 580-81 (4th Cir. 1994);
4 In re Zarzynski, 771 F.2d 304, 306 (7th Cir. 1985); In re Jensen,
5 395 B.R. at 487-88.

6 As noted above, by its terms and consistent with its stated
7 purpose to discourage the filing of frivolous litigation by Idaho
8 prison inmates, Idaho Code § 31-3220A(16) imposes a financial
9 penalty to deter such litigation. We conclude that its primary
10 purpose is punitive, and any reimbursement of costs and
11 attorney's fees to Idaho governmental entities is merely
12 incidental to its primary purpose. Accordingly, we agree with
13 the bankruptcy court that "the elements of Idaho Code § 31-
14 3220A(16) suggestive of compensatory purposes do not override its
15 penal intent." We conclude that the bankruptcy court did not err
16 in determining that Mr. Searcy's debt to Ada County was excepted
17 from his discharge under § 523(a)(7).

18 B. § 523(a)(17)

19 Mr. Searcy further appeals the bankruptcy court's
20 determination that his debt to Ada County was excepted from his
21 discharge under § 523(a)(17). However, since we have concluded
22 that it is appropriate to affirm the bankruptcy court's decision
23 to except Mr. Searcy's debt to Ada County from his discharge
24 based on § 523(a)(7), we do not need to reach the § 523(a)(17)
25 issues, and we decline to do so.

26
27 Conclusion

28 For the foregoing reasons, we AFFIRM.