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

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. AZ-10-1035-PaJuBa
)	
THOMAS MICHAEL CAGNEY,)	Bk. No. 04-18134-RTB
)	
Debtor.)	Adv. No. 04-1266-RTB
_____)	
)	
THOMAS MICHAEL CAGNEY,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M ¹
)	
ANDREA J. SMITH,)	
)	
Appellee.)	
_____)	

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Argued and submitted on October 22, 2010
at Phoenix, Arizona

Filed - November 18, 2010

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

Hon. Redfield T. Baum, U.S. Bankruptcy Judge, Presiding

Appearances: Appellant Thomas Michael Cagney argued pro se
Thomas Merrill Quigley, Sherman & Howard, LLC
argued for Appellant Andrea J. Smith

Before: PAPPAS, JURY and BAUER,² Bankruptcy Judges.

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¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

² The Honorable Catherine E. Bauer, United States Bankruptcy Judge for the Central District of California, sitting by designation.

1 Chapter 7³ debtor Thomas M. Cagney ("Cagney") appeals from
2 the judgment of the bankruptcy court that a \$25,000 state court
3 judgment in favor of his former wife, Andrea J. Smith ("Smith"),
4 is excepted from discharge in Cagney's bankruptcy case under
5 § 523(a)(6). We AFFIRM.

6 **FACTS**⁴

7 Cagney filed a voluntary petition under chapter 7 on
8 October 15, 2004. On December 21, 2004, Smith commenced an
9 adversary proceeding against Cagney, wherein she asked the
10 bankruptcy court to declare that the debts represented by three
11 state court judgments issued by the Arizona Superior Court
12 (Maricopa County) against Cagney were excepted from discharge.
13 The debts were based on: (1) a judgment in favor of Smith against
14 Cagney for unpaid child support (the "Child Support Judgment");
15 (2) a criminal restitution order in Smith's favor arising from an
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17
18 ³ Unless otherwise indicated, all chapter, section and rule
19 references herein are to the Bankruptcy Code, 11 U.S.C.
20 §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure,
21 Rules 1001-9037, as enacted and promulgated prior to the effective
22 date (October 17, 2005) of most of the provisions of the
23 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,
24 Pub. L. 109-8, April 20, 2005, 119 Stat. 23.

25 ⁴ Cagney failed to comply with any of the provisions of
26 Rules 8009 and 8010 regarding preparation of briefs and, with the
27 exception of the transcript of the trial on nondischargeability,
28 he provided no excerpts of record. This factual summary is
compiled from the Panel's earlier Memorandum decision in
connection with this case, Cagney v. Smith (In re Cagney), BAP No.
AZ-07-1384 (9th Cir. BAP July 25, 2008) (the "BAP Memo"), and from
entries in the bankruptcy court's adversary proceeding docket. We
also have considered the fourteen documentary exhibits presented
to the bankruptcy court at the hearing on November 24, 2009, which
were offered and received in evidence without objection. Hr'g Tr.
4:4-11. The exhibits are described by Smith's attorney during the
trial, Hr'g Tr. 47:16-50:25, without objection to those
descriptions from Cagney.

1 aggravated assault committed against her by Cagney (the
2 "Restitution Award"); and (3) a civil judgment of \$25,000 in favor
3 of Smith (the "Smith Judgment") and \$15,000 in favor of Katy A.
4 Cagney ("Katy"), Smith and Cagney's then-minor child ("Katy's
5 Judgment" and, together with the Smith Judgment, the "Civil
6 Judgment") arising from the assault incident.

7 The State Court Proceedings

8 On September 16, 2001, Cagney allegedly assaulted Smith and
9 Katy by pointing a shotgun at them (the "September 16 Assault").
10 Cagney was arrested in October 2001 and originally entered not
11 guilty pleas as to the September 16 Assault. On March 25, 2002,
12 Cagney apparently changed his mind as to the criminal charges,
13 electing instead to plead guilty to committing an aggravated
14 assault against Smith and to disorderly conduct against Katy. The
15 state court on April 24, 2002, found Cagney guilty of aggravated
16 assault on Smith under Ariz. Rev. Stat. ("A.R.S.")
17 §§ 13-1203(A)(2) and 13-1204(A)(2) & (B) and of disorderly conduct
18 on Katy under A.R.S. §§ 13-2904 and 13-3601(A). Both crimes were
19 felonies. The court suspended Cagney's jail sentence and placed
20 him on probation for four years for the aggravated assault charge
21 and three years for the disorderly conduct; the probation terms
22 were to run concurrently.⁵ In addition, based upon the September
23 16 Assault, the state court ordered that Cagney pay Smith
24 restitution of \$4,260.38 "for the economic loss of the victim."

25 _____
26 ⁵ At some later point not clear in the record, Cagney's
27 probation was revoked and he was incarcerated. The record does
28 not reveal the reason for revocation. Cagney spent more than
three years in the state prison in Florence, Arizona. Hr'g Tr.
14:21-22.

1 On August 20, 2002, the state court entered an order
2 dissolving the marriage of Cagney and Smith. In the dissolution
3 proceeding, the state court entered the Child Support Judgment in
4 Smith's favor.

5 Smith, for herself and Katy, filed a civil complaint in
6 Arizona Superior Court on April 25, 2002, alleging that Cagney had
7 assaulted them with a shotgun, thereby inflicting emotional
8 distress.⁶ Smith's complaint sought recovery of compensatory
9 damages, punitive damages and related costs from Cagney.

10 Smith filed a motion for partial summary judgment based on
11 the September 16 Assault. Hr'g Tr. 49:10-14 (November 24, 2009).
12 On September 2, 2002, the state court granted partial summary
13 judgment in her favor, reserving the question of damages for
14 trial. Hr'g Tr. 49:21-23. A trial was held on the damages
15 question at some later time not clear in the record. On
16 November 3, 2004, the state court entered the Civil Judgment,
17 awarding \$25,000 to Smith and \$15,000 to Katy.

18 Events Leading to the Prior BAP Decision

19 In the adversary proceeding, on June 20, 2007, Smith filed a
20 motion for summary judgment seeking a judgment excepting the three
21 State Court Judgments from discharge under §§ 523(a). Smith
22 alleged that: The Child Support Judgment was nondischargeable
23 under § 523(a)(5) as a domestic support obligation. The
24 Restitution Award, Smith argued, was nondischargeable under
25 § 523(a)(6) as a "willful and malicious injury caused by the
26

27 ⁶ The complaint alleged other claims against Cagney, based
28 upon different conduct, but those other counts of the complaint
are not relevant in this appeal.

1 debtor." Finally, the Civil Judgment, according to Smith, also
2 fell within § 523(a)(6) because, among other reasons, Cagney's
3 guilty plea to aggravated assault with a shotgun should estop him
4 from denying that the Civil Judgment arose out of a willful and
5 malicious injury. Cagney, acting pro se, responded to Smith's
6 motion, generally attempting to relitigate the merits of the
7 underlying judgments and stating that he would never have
8 sufficient funds to pay the judgments.

9 The bankruptcy court conducted a hearing on Smith's summary
10 judgment motion on September 11, 2007. In its minute order
11 entered on September 24, 2007, the court determined that Cagney
12 had failed to meet his burden of showing that any genuine issues
13 of material fact were in dispute and granted summary judgment to
14 Smith. In its judgment entered November 13, 2007, the bankruptcy
15 court ruled that the Child Support Judgment was nondischargeable
16 under § 523(a)(5) as a domestic support obligation and that the
17 Restitution Award was nondischargeable under § 523(a)(7). Cagney
18 did not oppose, or later appeal, the determinations of
19 nondischargeability as to either of these state court judgments.

20 As to the Civil Judgment, the bankruptcy court applied the
21 principles of issue preclusion and determined that all of the
22 elements of § 523(a)(6) had been met, thus rendering it
23 nondischargeable under § 523(a)(6).

24 Cagney appealed the bankruptcy court's decision as to the
25 Civil Judgment to the BAP. The BAP determined that the bankruptcy
26 court erred in applying issue preclusion to the Civil Judgment,
27 because two of the five elements required by Arizona law to invoke
28 issue preclusion were not met: whether the issue was actually

1 litigated in the previous proceeding, and whether resolution of
2 the issue was essential to the judgment. BAP Memo at 14-18. The
3 Panel was particularly concerned that neither the bankruptcy court
4 nor the Panel had access to many of the critical documents, such
5 as the transcripts of the state court proceedings and the findings
6 of the state court judge. BAP Memo at 17. The Panel reversed the
7 summary judgment and remanded the action to the bankruptcy court
8 for further proceedings.

9 The Proceedings on Remand and This Appeal

10 On February 27, 2009, Smith requested a trial date in the
11 adversary proceeding, arguing that there remained only the
12 question of the nondischargeability of the Civil Judgment. On
13 March 10, Cagney moved to dismiss the case and discharge the Civil
14 Judgment, primarily on grounds that he could not afford to
15 continue the case and provide for his family. Cagney also moved
16 on March 31, 2009 for recusal of the bankruptcy judge for
17 prejudice.

18 The bankruptcy court held a hearing on May 13, 2009 on the
19 recusal and dismissal motions. The bankruptcy court concluded
20 that there were no grounds for dismissal or recusal and directed
21 the parties to prepare for trial.

22 Trial was held in the adversary proceeding on November 23,
23 2009. Smith was represented by counsel and Cagney appeared pro
24 se. Cagney testified at trial. He discussed the events of
25 September 16, 2001, generally denying that an aggravated assault
26 ever occurred, and insisting that he only pled guilty to the
27 crimes in state court because he wanted the ordeal to be over
28 with. Hr'g Tr. 24:3-4, 18-19, 27:3-5. Cagney then called his

1 daughter Kelly Cagney and son Kevin Cagney as witnesses, although
2 neither had been present in the house at the time of the alleged
3 assault.

4 Smith did not call any witnesses, relying solely on the
5 documentary evidence submitted to the bankruptcy court. Smith's
6 fourteen exhibits were entered into evidence without objection
7 from Cagney. These documents included, among others:

8 - Exhibit 2, the plea agreement signed by Cagney. At trial,
9 Cagney admitted under oath that he had placed his initials next to
10 the count for aggravated assault against Smith, and the count for
11 disorderly conduct against Katy, and had then signed the plea
12 agreement. Hr'g Tr. 16:14-18.

13 - Exhibit 3, the transcript of the hearing in the state court
14 on March 25, 2002, where Cagney changed his not guilty plea to
15 guilty on aggravated assault and disorderly conduct. As recounted
16 in the transcript of the November 23rd hearing, Cagney's attorney
17 described the factual basis of the criminal charges and then
18 stated, "On September 16, 2001, Mr. Cagney had a shotgun in his
19 hand and pointed it at Andrea Cagney Smith, now Donnelly." Trial
20 Exh. 3 at 18; Hr'g Tr. 48:18-20. Later on during this hearing, in
21 response to the state court's question to Cagney if his lawyer's
22 statement was true, Cagney replied, "yes, sir." Trial Exh. 3 at
23 20; Hr'g Tr. 49:1-2.

24 -Exhibit 12, the minute entry of the state court entering
25 judgment for damages in the civil action. The minute entry
26 indicates that the state court is basing the damage awards on
27 Cagney's criminal actions on September 16 for aggravated assault
28 and disorderly conduct. Hr'g Tr. 50:17-21.

1 Following closing arguments, the bankruptcy court took the
2 issues under advisement; it entered a minute entry/order on
3 December 21, 2009. In it, the bankruptcy court reviewed Arizona
4 statutory law regarding the elements of the crimes of aggravated
5 assault and disorderly conducted. The court noted that Cagney's
6 defense consisted of two propositions: (1) that the criminal
7 event, displaying and aiming a shotgun, never occurred; and
8 (2) that he pled guilty because he wanted the criminal proceedings
9 to be over, and he believed that would be the end of it. The
10 bankruptcy court rejected both of these positions.

11 First, the bankruptcy court observed that Cagney had
12 confirmed to the state court judge his attorney's statement that
13 Cagney "had a shotgun in his hand and he pointed it at the
14 direction of Andrea Cagney." The bankruptcy court accepted
15 Cagney's statement before the state court judge as true and
16 declined to credit Cagney's later denial in bankruptcy court.

17 After its review of the evidentiary record, the bankruptcy
18 court concluded that the aggravated assault on Smith was the type
19 of willful and malicious injury not dischargeable under
20 § 523(a)(6) and ruled the Smith Judgment portion of the Civil
21 Judgment nondischargeable. However, the bankruptcy court found
22 the Katy Judgment, based on disorderly conduct, was premised upon
23 Cagney's reckless act that was not intentional, and thus that debt
24 was not excepted from discharge under § 523(a)(6). Id.

25 The bankruptcy court entered a judgment implementing its
26 decision on February 4, 2010. Cagney had filed a premature notice
27 of appeal concerning the court's ruling regarding the Smith
28 Judgment on January 20, 2010; that notice became timely by entry

1 of judgment on February 4, 2010. Rule 8002(b).

2
3 **JURISDICTION**

4 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
5 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C. § 158.

6
7 **ISSUE**

8 Whether the bankruptcy court erred in ruling that the Smith
9 Judgment was nondischargeable in Cagney's bankruptcy under
10 § 523(a)(6).

11
12 **STANDARD OF REVIEW**

13 "Whether a claim is nondischargeable presents mixed issues of
14 law and fact and is reviewed de novo." Carrillo v. Su (In re Su),
15 290 F.3d 1140, 1142 (9th Cir. 2002); Maaskant v. Peck (In re
16 Peck), 295 B.R. 353, 360 (9th Cir. BAP 2003). A mixed question
17 exists when the facts are established, the rule of law is
18 undisputed, and the issue is whether the facts satisfy the legal
19 rule. Murray v. Bammer (In re Bammer), 131 F.3d 788, 792 (9th
20 Cir. 1997). De novo means review is independent, with no deference
21 given to the trial court's conclusion. Rule 8013.

22
23 **DISCUSSION**

24 A creditor bears the burden of proving that its claim
25 against a debtor is excepted from discharge under section
26 523(a)(6) by a preponderance of the evidence. Harmon v. Kobrin
27 (In re Harmon), 250 F.3d 1240, 1246 (9th Cir. 2001); see also,
28 Grogan v. Garner, 498 U.S. 279, 284 (1991).

1 Section 523(a)(6) provides: "(a) A discharge under 727 . . .
2 of this title does not discharge an individual debtor from any
3 debt - . . . (6) for willful and malicious injury by the debtor to
4 another entity or to the property of another entity." Whether a
5 particular debt is for willful and malicious injury by the debtor
6 to another or the property of another under section 523(a)(6)
7 requires application of a two-pronged test to the conduct giving
8 rise to the injury. In other words, the creditor must prove that
9 the debtor's conduct in causing the injuries was both willful and
10 malicious. Barboza v. New Form, Inc. (In re Barboza), 545 F.3d
11 702,711 (9th Cir. 2008)(citing Carrillo v. Su (In re Su), 290 F.3d
12 1140, 1146-47 (9th Cir. 2002) and requiring the application of a
13 separate analysis of each prong of "willful" and "malicious").

14 In this context, to show that a debtor's conduct is willful
15 requires proof that the debtor deliberately or intentionally
16 injured the creditor or the creditor's property, and that in doing
17 so, the debtor intended the consequences of his act, not just the
18 act itself. Kawaauhau v. Geiger, 523 U.S. 57, 60-61 (1998);
19 In re Su, 290 F.3d at 1143. The debtor must act with a subjective
20 motive to inflict injury, or with a belief that injury is
21 substantially certain to result from the conduct. In re Su,
22 290 F.3d at 1143.

23 For conduct to be malicious, the creditor must prove that
24 the debtor: (1) committed a wrongful act; (2) done intentionally;
25 (3) which necessarily causes injury; and (4) was done without
26 just cause or excuse. Id.

27 Whether a debtor's conduct is willful and malicious under
28 section 523(a)(6) is a question of fact reviewed for clear

1 error. Banks v. Gill Distrib. Ctrs., Inc. (In re Banks), 263 F.3d
2 862, 869 (9th Cir. 2001).

3 At trial, and in this appeal, Cagney has steadfastly insisted
4 that he did not commit aggravated assault on Smith by pointing a
5 shotgun at her. Whether he did or not is, of course, a
6 straightforward question of fact.

7 The evidence before the bankruptcy court on remand included
8 the record from the state court proceedings, the critical portions
9 of which were Cagney's plea agreement in which he affirmed that he
10 had committed the acts constituting an aggravated assault; the
11 transcript of state court hearings at which Cagney changed his
12 plea from not guilty to guilty as to the assault and confirmed to
13 the state court that he had pointed a shotgun at Smith; and the
14 state court's minute entry on the trial for damages in which the
15 state court found that the damages were awarded only on the basis
16 of the criminal actions for aggravated assault and disorderly
17 conduct.

18 To rebut this extensive record from the state court, Cagney
19 asserted in testimony in the bankruptcy court that he did not
20 commit the aggravated assault of displaying and aiming a shotgun
21 at Smith. He also offered the testimony of two of his children,
22 neither of whom were present at the critical incident.

23 On this record, it is clear that the bankruptcy court was
24 presented with two views of the evidence concerning whether Cagney
25 had willfully and maliciously assaulted Smith. In response to the
26 evidence, the bankruptcy court decided that it would "credit
27 [Cagney's] admissions in state court in the criminal case over
28 Cagney's denials before this court." This sort of credibility

1 determination by the bankruptcy court on a question of fact is
2 entitled to deference from this Panel. Rule 8013. Moreover, to
3 the extent that the bankruptcy court was presented with two
4 permissible views of the evidence, its choice between them cannot
5 be clear error. Anderson v. City of Bessemer City, NC, 470 U.S.
6 564, 573 (1985). Thus, the bankruptcy court did not clearly err
7 in determining that Cagney committed aggravated assault on Smith
8 on September 16, 2001.

9 Based upon this factual finding, the bankruptcy court then
10 determined that the damages resulting from the aggravated assault
11 were nondischargeable under § 523(a)(6). The court examined the
12 Arizona statutes relating to aggravated assault: A.R.S. §§ 13-
13 1203(A)(2) and 13-1204(A)(2)⁷, which provide:

14 Assault; classification. A. A person commits assault
15 by: . . . Intentionally placing another person in
reasonable apprehension of imminent physical injury[.]

16 A.R.S. § 13-1203(A)(2)⁸

17 Aggravated assault; classification; definition. A. A
18 person commits aggravated assault if the person commits
19 assault as prescribed by section 13-1203 under any of
the following circumstances: 2. If the person
uses a deadly weapon or dangerous instrument.

20 A.R.S. § 13-1204(A)(2) These statutory provisions, together with
21 the admissions and pleas of Cagney in the state and bankruptcy
22 courts, meet the willful and malicious injury prongs of
23 § 523(a)(6).

24 ⁷ In its minute entry, the bankruptcy court incorrectly
25 identified these statutes as found in title 12 of the Arizona
26 Revised Statutes, instead of title 13. This was a harmless error.
27 Title 13 is the Arizona Criminal Code, and the court correctly
quoted the provisions of that title.

28 ⁸ A.R.S. § 13-1204 was amended by the Arizona legislature by
Ariz. Laws 2010, 2nd Reg. Sess., Ch. 241. However, the amendment
did not affect § 13-1204(A)(2).

1 To prove willfulness, Geiger requires that the debtor act
2 with a subjective motive to inflict injury or with a belief that
3 injury is substantially certain to result from the conduct.
4 523 U.S. at 61. A guilty plea to a charge under A.R.S. § 13-
5 1203(A)(2), even if not preclusive, certainly constitutes an
6 admission by the criminal defendant of his intent to place a
7 person in reasonable apprehension of physical injury. That
8 "reasonable apprehension" is a mental injury under Arizona law.
9 State v. Johnson, 72 P.3d 343, 351 (Ariz. 2003) (reasonable
10 apprehension of being shot is a mental injury). In addition,
11 Cagney accomplished this intent by use of a "deadly weapon or
12 dangerous instrument." Consequently, then, Cagney's guilty plea
13 to aggravated assault represents evidence of Cagney's subjective
14 motive to inflict injury on Smith by pointing the shotgun at her,
15 thereby meeting Geiger's requirements for willfulness.

16 At trial, Cagney made a particularly telling admission during
17 his testimony by stating "if you pull a gun on somebody, you use
18 it. Period." Tr. Hr'g 27:18-19. In light of this statement, the
19 bankruptcy judge explored Cagney's meaning:

20 THE COURT: At least in my experience, having been in the
21 military, is that you may have a weapon, but you don't
22 always use it. Which seems somewhat contradictory to
23 what you just told me. So if you would, I want you to
24 educate me [as to] what you meant by that statement.

23 CAGNEY: Well, we were pretty much trained that if you
24 pointed a gun [] if you were going to point a gun at
25 somebody, you used it.

25 THE COURT: Okay. So you meant, if you pointed it at
26 somebody -

26 CAGNEY: Yes, sir.

27 THE COURT: - then there was the intention -
28

1 CAGNEY: Certainly, yes sir.

2 THE COURT: - to utilize. Not necessarily that if you
3 had it in your possession you were going to use it.
Correct?

4 CAGNEY: That is correct.

5 Hr'g Tr. 28:12-29:6.

6 It is not clear why Cagney made this statement, obviously
7 relating to his intent in pointing the gun at Smith. But whatever
8 Cagney's reasons for his testimony, this statement constitutes
9 probative evidence that his conduct on September 16 was willful.

10 For Cagney's conduct to be malicious, Smith must prove that
11 he: (1) committed a wrongful act; (2) intentionally; (3) which
12 necessarily causes injury; and (4) without just cause or excuse.
13 In re Su, 290 F.3d at 1143. As a felony punishable under Arizona
14 law by incarceration for up to eight years, by definition,
15 aggravated assault is a wrongful act. Cagney's guilty plea is
16 evidence that he intended to assault Smith. That guilty plea is
17 also an admission that Cagney placed Smith in reasonable
18 apprehension of physical injury, which itself constitutes an
19 injury under Arizona law. And, finally, Cagney has not suggested
20 that the assault was justified. Based on this record, we conclude
21 that the bankruptcy court did not err in ruling that Cagney's
22 aggravated assault on Smith constituted the type of willful and
23 malicious injury not dischargeable in bankruptcy under
24 § 523(a)(6).

25 Cagney objects that the bankruptcy court improperly excluded
26 the results of his polygraph examination that he offered to
27 support his credibility. However, the polygraph test results were
28 not sponsored by sworn statements or testimony from the examiner

1 and are thus unauthenticated and inadmissible under Fed. R.
2 Evid. 901. A decision to exclude evidence for lack of
3 authentication "rests in the sound discretion of the court."
4 Gates v. Rivera, 993 F.2d 697, 700 (9th Cir. 1993). Second, the
5 bankruptcy court correctly ruled that the unsworn polygraph was a
6 "statement by somebody who's not on the witness stand," and
7 inadmissible as hearsay under Fed. R. Evid. 802. Hr'g Tr.
8 13:24-14:1. Third, the bankruptcy court did not consider
9 polygraph results admissible as probative of the veracity of the
10 examinee. Hr'g Tr. 14:2-4; see Goel v. Gonzalez, 490 F.3d 735,
11 739 (9th Cir. 2007)("There is simply no consensus that polygraph
12 evidence is reliable. To this day, the scientific community
13 remains extremely polarized about the reliability of polygraph
14 techniques." (quoting United States v. Scheffer, 523 U.S. 303, 309
15 (1998))); see also United States v. Benavidez-Benavidez, 217 F.3d
16 720, 724 (9th Cir. 2000); United States v. Falsia, 724 F.2d 1339,
17 1341 (9th Cir. 1983) ("With the polygraph's misleading reputation
18 as a 'truth teller,' the widespread debate concerning its
19 reliability, the critical requirement of a competent examiner and
20 the judicial problems of self-incrimination and hearsay, a trial
21 court will rarely abuse its discretion by refusing to admit the
22 evidence, even for a limited purpose and under limited
23 conditions."). The bankruptcy court therefore did not abuse its
24 discretion in declining to admit the test results. Benavidez-
25 Benavidez, 217 F.3d at 725 (trial court has "wide discretion" to
26 exclude polygraphic evidence).

27 Cagney also asserts that the bankruptcy judge was prejudiced
28 against him and asks that we vacate the judgment and remand this

1 matter to another judge. We have carefully examined the record
2 presented to us and find no evidence of bias or prejudice by the
3 bankruptcy court. A finding of judicial bias must usually stem
4 from some personal interest in the case or an extrajudicial
5 source. Liteky v. United States, 510 U.S. 540, 552-53 (1994).
6 There is no evidence in the record before us that the bankruptcy
7 judge had any personal interest, financial or otherwise, in this
8 case. The "extrajudicial source" rule is implicated when bias
9 originates outside the courtroom. United States v. Grinnell
10 Corp., 384 U.S. 563, 583 (1966) (explaining that the "alleged bias
11 and prejudice to be disqualifying must stem from an extrajudicial
12 source and result in an opinion on the merits on some basis other
13 than what the judge learned from his participation in the case.").
14 Here, there is no indication the bankruptcy judge's opinions were
15 based on any information or events originating outside the
16 bankruptcy court proceedings.

17
18 **CONCLUSION**

19 We AFFIRM the judgment of the bankruptcy court.
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