

OCT 15 2012

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

1 In re: ) BAP No. CC-11-1483-MkHTa  
2 CHARLENE GRUNTZ, )  
3 Debtor. )  
4 )  
5 )  
6 ROBERT GRUNTZ, )  
7 Appellant, )  
8 )  
9 v. ) **MEMORANDUM\***  
10 )  
11 P.J. ZIMMERMAN, Chapter 7 )  
12 Trustee; UNITED STATES TRUSTEE, )  
13 Appellees. )  
14 )

Argued and Submitted on September 21, 2012  
at Pasadena, California

Filed - October 15, 2012

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Meredith A. Jury, Bankruptcy Judge, Presiding

Appearances: Appellant Robert Gruntz argued on his own behalf;  
Appellee P.J. Zimmerman argued on her own behalf.

Before: MARKELL, HOLLOWELL and TAYLOR,\*\* Bankruptcy Judges.

\*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.

\*\*Hon. Laura S. Taylor, United States Bankruptcy Judge for  
the Southern District of California, sitting by designation.



1 In her Schedules, Charlene claimed ownership of three  
2 parcels of real property: (1) a ranch located on Kirby Street in  
3 San Jacinto, California ("Kirby Ranch"), (2) a residence located  
4 on Eaton Avenue in Hemet, California ("Eaton Residence"), and  
5 (3) a residence located on Jeffrey Circle in Hemet, California  
6 ("Jeffrey Circle Residence").

7 Charlene's schedules suggested that each parcel might have  
8 some value to the estate, but ultimately the Trustee determined  
9 that each parcel was burdensome or of no value to the estate.  
10 Accordingly, she obtained authorization to abandon them.

11 Even though the Trustee no longer claims any interest in  
12 these three parcels, the bankruptcy estate's previously-claimed  
13 interest in two of these three parcels - the Kirby Ranch and the  
14 Jeffrey Circle Residence - is central to our resolution of this  
15 appeal. We will discuss each of these two parcels in turn.

#### 16 **1. Kirby Ranch**

17 Shortly after Charlene's bankruptcy filing, in August 2008,  
18 the Trustee filed an emergency motion in the bankruptcy court  
19 seeking authorization to take immediate action concerning the  
20 Kirby Ranch. As set forth in the emergency motion, the Trustee  
21 and her associates had conducted a preliminary investigation of  
22 the Kirby Ranch, which revealed the following:

- 23 • Charlene was the title holder of record of the Kirby Ranch;
- 24 • Nothing in Charlene's Schedules or in her Statement of  
25 Financial Affairs indicated that she was at the time running  
26 any business located on the Kirby Ranch;
- 27 • A physical inspection of the Kirby Ranch indicated that  
28 someone was boarding roughly eighty horses on the property;

- 1 • A woman at the property claimed that she and her husband  
2 managed a horse boarding business on the property for  
3 someone by the name of "Bob";
- 4 • The physical inspection also suggested that there was  
5 insufficient food and shelter on the premises for eighty  
6 horses;
- 7 • In the pending state court dissolution proceeding between  
8 Charlene and Robert, a receiver by the name of Steven Speier  
9 ("Speier") had been appointed to take possession of the  
10 Kirby Ranch;
- 11 • Speier advised the Trustee that he also was aware of the  
12 horses being boarded on the property but did not know who  
13 owned the horses or who was running the business located on  
14 the Kirby Ranch;
- 15 • Speier also advised the Trustee that he had not collected  
16 any income that might have been generated from the horse  
17 boarding business;
- 18 • The physical condition of the Kirby Ranch was poor, with  
19 large amounts of garbage and old motor vehicles covering a  
20 significant portion of the property; and
- 21 • No one had stepped forward with either proof of insurance or  
22 claiming ownership of the business.

23 Based on these circumstances, the Trustee sought court  
24 approval to take immediate possession and control of the Kirby  
25 Ranch, to immediately terminate all business operations taking  
26 place on the property, and to return all horses to their owners.

27 A hearing was set on the emergency motion, and the Trustee  
28 gave notice of the hearing and the motion to, among others,

1 Robert and two lawyers who represented Robert in other matters.<sup>4</sup>  
2 No opposition was ever filed in response to the emergency motion,  
3 and it was ultimately granted.

4       Neither Robert nor anyone else ever sought any relief from  
5 the order granting the emergency motion. Notably, the order  
6 granting the emergency motion identified the Kirby Ranch as  
7 property of Charlene's bankruptcy estate. There is no indication  
8 in the record provided, or in our independent review of the  
9 bankruptcy case docket, that anyone attempted to dispute the  
10 identification of the Kirby Ranch as estate property at or around  
11 the time of the emergency motion.

12       In October 2008, the Trustee sought and obtained the court's  
13 permission to employ Pope as her field agent to provide services  
14 on behalf of the bankruptcy estate concerning the Kirby Ranch.  
15 In the employment application, the Trustee stated that, prior to  
16 filing the employment application, Pope had secured the property  
17 for the Trustee, and had arranged for the return of all of the  
18 horses formerly being boarded on the property.<sup>5</sup> The Trustee  
19 further stated that she needed to employ Pope because his future  
20 services might be needed to secure, supervise and clean up the  
21

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22       <sup>4</sup>The proofs and declarations of service filed in conjunction  
23 with the emergency motion indicate that Robert and his state  
24 court counsel Geoff S. Morris ("Morris") were each served with  
25 notice. A lawyer by the name of Lazaro E. Fernandez  
26 ("Fernandez") also was served. Fernandez had appeared in the  
27 bankruptcy case on behalf of Robert in July 2008. The entered  
28 order granting the emergency motion also was served on the same  
three people.

<sup>5</sup>According to the Trustee, nearly all of the horses were  
claimed by and turned over to Robert.

1 Kirby Ranch. The Trustee asserted: "The Kirby Property (in  
2 particular) contains a staggering quantity of garbage on the  
3 premises." Employment Application (Oct 2, 2008) at 2:22.

4 Like the August 2008 emergency motion, the Trustee's  
5 employment application once again refers to the Kirby Ranch as  
6 estate property. And once again, neither Robert nor anyone else  
7 objected to the employment application.<sup>6</sup> It was thus granted.  
8 No one has since sought relief from the order granting the  
9 employment application.

10 In the numerous filings in Charlene's case, Robert has made  
11 a number of statements in in which he claims the he and Charlene  
12 own or owned the Kirby Ranch as community property. The  
13 statements contained in a motion he filed in the bankruptcy court  
14 in December 2008 are representative. In that motion, Robert's  
15 counsel stated on his behalf: "Robert Gruntz has always  
16 maintained that the 'Kirby Property' is community property as  
17 well as several other properties in the name(s) of Robert Gruntz  
18 and/or Charlene Gruntz." Notice of Motion and Motion of Robert  
19 Gruntz for reconsideration, etc. (Dec. 1, 2008) at 3:14-16. In  
20 the same motion, his counsel also states: "Mr. Johnson [Trustee's  
21 counsel] is correct the 'Kirby Property' is community property  
22 and therefore is liable for community debts." Id. at 6:11-12.  
23 From these statements it is obvious that it apparently served  
24 Robert's interests at the time to assert that he and Charlene

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25  
26 <sup>6</sup>Both the employment application and the entered order  
27 granting the employment application were served on Morris and  
28 Fernandez. However, unlike the emergency motion, the Trustee did  
not separately serve on Robert the employment application and the  
employment order.

1 jointly owned the Kirby Ranch as community property.

2 At other times, however, Robert has filed papers with the  
3 bankruptcy court alluding to the claims of others that, if  
4 proven, would establish that neither he nor Charlene own the  
5 Kirby Ranch.<sup>7</sup> These third-party ownership claims were the  
6 subject of an adversary proceeding commenced in May 2009 and  
7 dismissed without prejudice in October 2009.

8 While Robert now points to myriad disputes and settlements  
9 involving numerous parties potentially calling into doubt the  
10 estate's formerly-claimed interest in the Kirby Ranch, we  
11 reiterate that no one ever sought either to oppose or to obtain  
12 relief from the two orders which authorized the Trustee to act  
13 and to employ a field agent in order to safeguard and maintain  
14 the Kirby Ranch, a parcel that the Trustee had reason to believe  
15 at the time: (1) was valuable property of the estate, and  
16 (2) needed to be secured and maintained in order to reduce the  
17 risk of liability to the estate.

18 **2. Jeffrey Circle Residence, and the rents derived therefrom**

19 According to the Trustee, while being examined at her  
20 § 341(a) meeting of creditors, Charlene disclosed that she had  
21 lived in the Jeffrey Circle Residence until 2007. Charlene  
22 apparently further disclosed at her § 341(a) meeting that she had  
23 been renting the property since 2007 and that she was delinquent  
24 on both mortgage payments and taxes owed on the property.

25 In April 2009, Downey Savings and Loan Association  
26

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27  
28 <sup>7</sup>For her part, Charlene has claimed that she owns 100% of  
the Kirby Ranch, as her separate property.

1 ("Downey"), the holder of the first deed of trust against the  
2 Jeffrey Circle Residence, sought and obtained relief from the  
3 automatic stay so that it could proceed with a foreclosure of the  
4 Jeffrey Circle Residence. Downey also claimed that it was  
5 entitled to the rents the Trustee had collected pursuant to the  
6 terms of its deed of trust and an accompanying rental property  
7 rider.

8 The Trustee filed a response in which she stated that she  
9 had reached an agreement with Downey in which she consented to  
10 its relief from stay motion, and agreed to abandon the estate's  
11 interest in the property. In return, Downey agreed to let the  
12 Trustee keep the roughly \$12,200 in rents that the Trustee had  
13 collected from Charlene and the tenants renting the property.

14 The bankruptcy court entered orders in May 2009 granting  
15 Downey's relief from stay motion and authorizing the Trustee to  
16 abandon the Jeffrey Circle Residence. Robert's counsel was served  
17 with notice of the relief from stay motion, the Trustee's  
18 response thereto and the Trustee's abandonment notice. Robert  
19 never objected to or sought relief from any of these matters.

### 20 **3. Compensation Motion**

21 On May 6, 2011, the Trustee filed her motion for  
22 authorization to compensate Pope for his services in connection  
23 with the safeguarding and maintaining of the Kirby Ranch.  
24 Although Pope claimed roughly \$45,000 in aggregate for his  
25 services and expenses incurred while acting as the Trustee's  
26 field agent, the only funds the estate had on hand to pay  
27 compensation was the roughly \$12,200 (plus accrued interest) that  
28 the Trustee had collected in rents from the Jeffrey Circle



1 Residence. Accordingly, Pope indicated his willingness to accept  
2 that amount in full satisfaction for his services and expenses.  
3 Moreover, the Trustee indicated in the compensation motion that  
4 her other duly-employed professionals, her accountant and her  
5 attorney, were willing to forego any compensation in light of the  
6 insufficient funds in the estate and in light of the Trustee's  
7 desire to use the funds to cover at least some of Pope's  
8 out-of-pocket expenses.

9 In addition to his efforts to initially secure the Kirby  
10 Ranch and to ensure that the horses were transferred off the  
11 property, Pope also needed to board up three buildings, cut weeds  
12 and remove a "staggering amount of trash on the 20 acres" as  
13 required by the Trustee's insurance carrier and various city and  
14 county government offices. It is not clear from the compensation  
15 motion or Pope's accompanying declaration precisely when  
16 particular services were rendered or expenses incurred, but Pope  
17 claimed, among other things, out-of-pocket expenses of over  
18 \$22,000 for dump fees and for bobcat and truck rental.

19 The Trustee further stated in the compensation motion that,  
20 at one point she had a prospective purchaser interested in buying  
21 the Kirby Ranch, but that ongoing disputes regarding ownership of  
22 the property and ongoing County demands that the property be  
23 further maintained prevented her from realizing any value from  
24 the property and forced her to abandon the estate's interest in  
25 the property.

26 Robert filed an opposition to the compensation motion on  
27 May 23, 2011. Among other things, Robert claimed: (1) the  
28 Trustee and the court were told at the outset of the case that

1 Charlene did not own the Kirby Ranch;<sup>8</sup> (2) because Charlene did  
2 not own the Kirby Ranch, the court lacked jurisdiction and/or  
3 authority to issue any orders relating in any way to that  
4 property; (3) the rents from the Jeffrey Circle Residence were  
5 community property jointly owned by Charlene and Robert;  
6 (4) because the rents were 50% his community property, that 50%  
7 could not be used to pay Pope for his services, which were  
8 Charlene's separate debt; and (5) no funds should be distributed  
9 from the estate unless and until ownership of the rents and  
10 ownership of the Kirby Ranch and the Jeffrey Circle Residence  
11 were finally determined. In her reply to Robert's opposition,  
12 the Trustee pointed out that the rents were the proceeds of the  
13 settlement between the Trustee and Downey, and hence were estate  
14 property.

15 After holding a hearing on the motion,<sup>9</sup> the bankruptcy court  
16 overruled Robert's objection and granted the compensation motion,  
17 by order entered June 9, 2011.

18 **4. The reconsideration motion.**

19 On June 20, 2011, a motion for reconsideration was filed by  
20 two people by the name of John Martin and Linda Martin. At the  
21 end of the motion, there is a signature for Linda Martin, "in pro  
22 per." Attached to the motion for reconsideration is a memorandum  
23 of points and authorities. At the end of the memorandum of

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24  
25 <sup>8</sup>Robert offered no evidence to support this assertion, nor  
26 have we found any evidence corroborating this assertion during  
our independent review of the docket and its contents.

27 <sup>9</sup>Robert never obtained the transcript from this hearing, so  
28 we do not know specifically what facts the court found or relied  
upon in granting the compensation motion.

1 points and authorities, there are signatures of a number of  
2 additional parties, including one for Robert. Parties other than  
3 Robert complained that they had inadequate notice of the  
4 compensation motion and that the court improperly prohibited them  
5 from appearing and presenting oral argument at the hearing on the  
6 compensation motion. But Robert is the only person who filed a  
7 notice of appeal, and as far as he is concerned, the  
8 reconsideration motion merely reiterates some of the same points  
9 he made in his opposition to the compensation motion.

10 After a hearing on the reconsideration motion, the  
11 bankruptcy court entered an order denying the reconsideration  
12 motion on August 18, 2011, and Robert timely filed a notice of  
13 appeal on August 31, 2011.<sup>10</sup>

#### 14 JURISDICTION

15 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
16 §§ 1334 and 157(b)(2)(A) and (B). We have jurisdiction under  
17 28 U.S.C. § 158.

#### 18 ISSUES

- 19 1. Did Robert provide us with a sufficient record?  
20 2. Did the bankruptcy court abuse its discretion in granting  
21 the Trustee's compensation motion and awarding roughly  
22

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23 <sup>10</sup>Even though Robert's notice of appeal only referenced the  
24 order denying the reconsideration motion, we will treat his  
25 appeal as also requesting review of the underlying compensation  
26 issues arising from the underlying compensation order. See Lolli  
27 v. County of Orange, 351 F.3d 410, 414-15 (9th Cir. 2003); Wash.  
28 State Health Facilities Ass'n v. Wash. Dept. of Soc. & Health  
Servs., 879 F.2d 677, 681 (9th Cir. 1989); McCarthy v. Mayo,  
827 F.2d 1310, 1313-1314 (9th Cir. 1987).

1 \$12,200 to Pope?

2 3. Did the bankruptcy court abuse its discretion in denying the  
3 reconsideration motion?

4 **STANDARDS OF REVIEW**

5 A bankruptcy court order awarding compensation under § 330  
6 is reviewed for abuse of discretion. Leichty v. Neary (In re  
7 Strand), 375 F.3d 854, 857 (9th Cir. 2004). Under the abuse of  
8 discretion standard of review, we first “determine de novo  
9 whether the [bankruptcy] court identified the correct legal rule  
10 to apply to the relief requested.” United States v. Hinkson,  
11 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc). And if the  
12 bankruptcy court identified the correct legal rule, we then  
13 determine under the clearly erroneous standard whether its  
14 factual findings and its application of the facts to the relevant  
15 law were: “(1) illogical, (2) implausible, or (3) without support  
16 in inferences that may be drawn from the facts in the record.”  
17 Id. (internal quotation marks omitted).

18 If a “motion for reconsideration” is filed within 14 days of  
19 the entry of the order to which it relates, it is treated as a  
20 motion to alter or amend judgment under Civil Rule 59(e).  
21 Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp., 248 F.3d  
22 892, 898-99 (9th Cir. 2001). If the reconsideration motion is  
23 filed beyond that time period, it is treated as a motion for  
24 relief from judgment under Civil Rule 60(b). Either way, the  
25 denial of such motions is reviewed for abuse of discretion. Id.;  
26 see also First Ave. W. Bldg., LLC v. James (In re OneCast Media,  
27 Inc.), 439 F.3d 558, 561 (9th Cir. 2006); Far Out Prods., Inc. v.  
28 Oskar, 247 F.3d 986, 992 (9th Cir. 2001); Clinton v. Deutsche

1 Bank Nat'l Trust Co. (In re Clinton), 449 B.R. 79, 82 (9th Cir.  
2 BAP 2011).

3 **DISCUSSION**

4 **A. Robert did not provide us with essential transcripts.**

5 While Robert has appeared in this appeal in pro per, he is  
6 no stranger either to the bankruptcy courts or the federal  
7 appellate courts. In fact, he was the appellant in a seminal  
8 Ninth Circuit Court of Appeals case involving the scope of the  
9 automatic stay, Gruntz v. Cnty. of Los Angeles (In re Gruntz),  
10 202 F.3d 1074 (9th Cir. 2000) (en banc). That appeal arose from  
11 Robert's bankruptcy case, which he filed many years ago, in 1988  
12 (Bankr. C.D. Cal. Case No. RS-88-08310-MG). In his bankruptcy  
13 case, Robert filed an adversary proceeding seeking relief from a  
14 state court criminal conviction for nonpayment of child support,  
15 claiming that the criminal proceedings against him violated the  
16 automatic stay. See In re Gruntz, 202 F.3d at 1077-78. An en  
17 banc panel of the Ninth Circuit ultimately determined that the  
18 automatic stay did not apply to the criminal proceedings. Id. at  
19 1088.

20 Robert not only has significant personal bankruptcy and  
21 appellate experience, but he also has had formal legal  
22 training.<sup>11</sup> Moreover, he knows how to order transcripts when he  
23 is so inclined. See Adv. No. RS-09-01223-MS, Doc. No. 41.

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24  
25 <sup>11</sup>While the en banc decision did not mention it, one of the  
26 Ninth Circuit's other decisions notes that Robert has a law  
27 degree, but is not a member of the state bar. See Gruntz v.  
28 Cnty. of Los Angeles (In re Gruntz), 166 F.3d 1020, 1023, amended  
and superseded, 177 F.3d 728, reh'r'g en banc granted and opn.  
withdrawn, 177 F.3d 729 (9th Cir. 2000).

1           However, the bankruptcy court's adversary and case dockets  
2 reflect that Robert never ordered nor obtained the transcripts  
3 from either the hearing on the compensation motion or the hearing  
4 on the reconsideration motion. By not ordering these  
5 transcripts, he has hamstrung our ability to review the  
6 bankruptcy court's orders for abuse of discretion.

7           Failure to order necessary transcripts may be grounds for  
8 dismissal of an appeal or summary affirmance. Kyle v. Dye  
9 (In re Kyle), 317 B.R. 390, 393 (9th Cir. BAP 2004), aff'd,  
10 170 Fed. Appx. 457 (9th Cir. 2006); see also Syncom Capital Corp.  
11 v. Wade, 924 F.2d 167, 169 (9th Cir. 1991). But we also have  
12 discretion, when practicable and appropriate, to proceed with  
13 whatever review the absence of the requisite transcripts allows.  
14 See, e.g., In re Kyle, 317 B.R. at 393-94.

15           We will exercise our discretion here to proceed as best we  
16 can without the requisite transcripts. At the same time, we are  
17 entitled to infer, based on Robert's failure to provide them,  
18 that there would be nothing in the transcripts that would help  
19 Robert's arguments on appeal. Gionis v. Wayne (In re Gionis),  
20 170 B.R. 675, 680-81 (9th Cir. BAP 1994).

21 **B. None of Robert's arguments on appeal have any merit.**

22           Robert makes the same arguments on appeal that he made in  
23 the bankruptcy court in opposition to the Trustee's compensation  
24 motion. First and foremost, Robert claims that the Kirby Ranch  
25 might not have been estate property because other people have  
26 asserted competing ownership claims thereto. According to  
27 Robert, unless and until there is a final judicial determination  
28 that Charlene owns some or all of the Kirby Ranch, the bankruptcy

1 court should not have authorized the Trustee either to employ or  
2 to compensate Pope for work done on behalf of the bankruptcy  
3 estate with respect to the Kirby Ranch.

4 Robert claims that his argument regarding ownership of the  
5 Kirby Ranch is jurisdictional. We disagree. There is nothing in  
6 the main bankruptcy jurisdiction statutes, 28 U.S.C. §§ 157 and  
7 1334, stating or suggesting that bankruptcy courts lack authority  
8 to hear matters and issue orders otherwise affecting  
9 administration of the bankruptcy estate unless and until a final  
10 determination is made that property potentially impacted by the  
11 matters and orders is estate property. The Supreme Court has  
12 counseled that care must be taken to avoid transmuting  
13 substantive arguments into jurisdictional arguments. As it has  
14 stated: " . . . when Congress does not rank a statutory  
15 limitation on coverage as jurisdictional, courts should treat the  
16 restriction as nonjurisdictional in character." Arbaugh v. Y & H  
17 Corp., 546 U.S. 500, 516, 126 S.Ct. 1235, 1245 (2006), cited with  
18 approval in, United Student Aid Funds, Inc. v. Espinosa, --- U.S.  
19 ---, 130 S.Ct. 1367, 1377-78 (2010).

20 Furthermore, Robert's attempt to characterize this argument  
21 as jurisdictional defies common sense. If litigants could  
22 undermine the bankruptcy court's jurisdiction to enter § 327  
23 employment orders and § 330 compensation orders by merely  
24 alleging that property potentially impacted by those orders might  
25 not be property of the estate, bankruptcy courts seldom if ever  
26 would be able to enter such orders over the objection of any  
27 interested party. This in turn would jeopardize the ability of  
28 bankruptcy trustees to expeditiously administer bankruptcy

1 estates.

2 At most, Robert's issue regarding the estate's interest in  
3 the Kirby Ranch goes to whether the services Pope performed were  
4 necessary or beneficial to the estate at the time they were  
5 rendered. This is among the factors the bankruptcy court must  
6 consider when ruling on a § 330 compensation request. See Garcia  
7 v. U.S. Trustee (In re Garcia), 335 B.R. 717, 724 (9th Cir. BAP  
8 2005).<sup>12</sup>

9 The necessity and benefit of the services rendered is  
10 measured based on circumstances as they existed at the time they  
11 were rendered and not based on the benefit of hindsight. See  
12 In re Garcia, 335 B.R. at 724; In re Mednet, 251 B.R. at 107.  
13 Here, we find it instructive that no one filed an objection when  
14 the Trustee proposed to employ Pope for precisely the same tasks  
15 that Pope later sought compensation for: the security and  
16 maintenance of the Kirby Ranch. Only when the Trustee later  
17 sought to pay Pope did Robert file an objection.

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18  
19 <sup>12</sup>Garcia lists all of the factors as follows:

- 20 (a) Were the services authorized?  
21 (b) Were the services necessary or beneficial to the  
22 administration of the estate at the time they were  
23 rendered?  
24 (c) Are the services adequately documented?  
25 (d) Are the fees required reasonable, taking into  
26 consideration the factors set forth in section  
330(a)(3)?  
(e) In making the determination, the court must  
consider whether the professional exercised reasonable  
billing judgment.

27 Id. (citing Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig  
28 Drug Co. (In re Mednet), 251 B.R. 103, 108 (9th Cir. BAP 2000),  
and In re Strand, 375 F.3d at 860).



1 In any event, at the time she sought authorization to employ  
2 Pope, the Trustee offered a sufficient showing of the necessity  
3 of securing and maintaining the Kirby Ranch. The Trustee feared  
4 she otherwise would expose the bankruptcy estate to a risk of  
5 liability unless the Kirby Ranch was properly secured and  
6 maintained. While Robert (and others) later alleged that  
7 Charlene might not actually own the Kirby Ranch, we were unable  
8 to find any paper filed in Charlene's bankruptcy case during the  
9 first several months of that case calling into question whether  
10 Charlene had any interest in the Kirby Ranch. In fact, as  
11 mentioned above, Robert asserted in his own early bankruptcy  
12 court filings that he and Charlene jointly owned the Kirby Ranch  
13 as community property, and Charlene claimed that the Kirby Ranch  
14 was her separate property. Regardless of whether the Kirby Ranch  
15 was Charlene's community or separate property, either type of  
16 ownership interest would have been sufficient to establish the  
17 Kirby Ranch as property of her bankruptcy estate. See  
18 § 541(a)(1) and (2).

19 Under these circumstances, Robert's belated raising of the  
20 issue regarding ownership of the Kirby Ranch does not establish  
21 that the bankruptcy court abused its discretion in authorizing  
22 the Trustee to compensate Pope in the approximate amount of  
23 \$12,200.

24 Robert also argues that he and Charlene jointly owned the  
25 Jeffrey Circle Residence as community property, and that he thus  
26 had a 50% community property interest in the rents collected  
27 therefrom. According to Robert, the bankruptcy court should not  
28 have used his 50% share of the rents to pay Pope because the

1 obligation to pay Pope was Charlene's separate, post-dissolution  
2 debt.

3 Robert's rents argument ignores the fact that the court,  
4 without any objection from him, granted Downey's relief from stay  
5 motion concerning the Jeffrey Circle Residence. In conjunction  
6 with that motion, the Trustee had agreed to the relief Downey was  
7 seeking in exchange for Downey's agreement to let the Trustee  
8 keep the roughly \$12,200 in rents she had collected. According  
9 to Downey, the rents collected otherwise would have been part of  
10 Downey's collateral under its first deed of trust against the  
11 Jeffrey Circle Residence.

12 But even if we were to disregard Downey's relief from stay  
13 motion and Downey's transfer to the Trustee of its interest in  
14 the rents, Robert still could not prevail on his rents argument.  
15 Assuming without deciding that Robert had a 50% community  
16 property interest in the rents, they still were property of  
17 Charlene's bankruptcy estate, 11 U.S.C. § 541(a)(2), and as such  
18 could be used to pay allowed administrative expenses of the  
19 estate, including the compensation awarded to Pope. The explicit  
20 language of the Bankruptcy Code supports this result.

21 Under § 541(a)(2), the non-debtor spouse's share of  
22 community property is classified as estate property, so long as  
23 that property is subject to the "sole, equal or joint management  
24 and control of the debtor" or is liable for allowable claims  
25 against the debtor. Even when dissolution proceedings are  
26 pending at the time of the debtor's bankruptcy filing, the non-  
27 debtor spouse's share of community property is property of the  
28 debtor's bankruptcy estate, unless the state court made a final

1 property division before the bankruptcy case was commenced. See  
2 Dumas v. Mantle (In re Mantle), 153 F.3d 1082, 1085 (9th Cir.  
3 1998) (applying California law and holding that "until division,  
4 all community property of the divorcing couple is property of the  
5 bankruptcy estate pursuant to § 541(a)(2).").

6 In California, community property generally is subject to  
7 the equal management and control of either spouse. See Cal. Fam.  
8 Code § 1100(a); see also Teel v. Teel (In re Teel), 34 B.R. 762,  
9 764 (9th Cir. BAP 1983) ("In California, with exceptions not here  
10 relevant, each spouse has management and control of community  
11 property . . . . Therefore, the community property of appellant  
12 and the debtor is property of the estate under both  
13 § 541(a)(2)(A) and (B)."). Moreover, the record here indicates  
14 that, if either spouse had sole management and control of the  
15 Jeffrey Circle Residence and the rents derived therefrom, it  
16 would have been Charlene. Robert has not disputed that Charlene  
17 held legal title to the Jeffrey Circle Residence as her sole and  
18 separate property, that she encumbered the Jeffrey Circle  
19 Residence by executing the first deed of trust held by Downey,  
20 and that she rented out the Jeffrey Circle Residence, which led  
21 to the accrual of the rents collected by the Trustee.

22 In any event, regardless of whether the rents were equally  
23 controlled by Robert and Charlene or solely controlled by  
24 Charlene, the entire amount of the rents constituted property of  
25 Charlene's bankruptcy estate under § 541(a)(2)(A), even if Robert  
26 held a 50% community property interest in the rents.

27 Having established that all of the rents were estate  
28 property, it also is beyond cavil that the bankruptcy court

1 properly could authorize the Trustee to use all of the rents to  
2 compensate Pope. Compensation awarded under § 330 qualifies as  
3 an allowed § 503(b)(2) administrative expense, which is subject  
4 to payment from all estate assets, including § 541(a)(2) estate  
5 property. See § 726(c)(1) ("Claims allowed under section 503 of  
6 this title shall be paid either from property of the kind  
7 specified in section 541(a)(2) of this title, or from other  
8 property of the estate, as the interest of justice requires.").

9 Nor can it seriously be doubted that the interest of justice  
10 permitted the bankruptcy court to authorize the Trustee to  
11 compensate Pope from the rents. The rents were the only funds  
12 available to provide any compensation. The Trustee duly obtained  
13 authorization to employ Pope, without any written opposition  
14 thereto. Additionally, the Trustee had sufficient grounds for  
15 believing at the time that the best interests of the estate would  
16 be served by employing Pope. Only after Pope had performed his  
17 services and sought payment did Robert file a written objection,  
18 questioning for the first time the necessity and benefit to the  
19 estate of Pope's employment and services. Moreover, the record  
20 here supports the conclusion that Pope's services were necessary  
21 and beneficial to the estate at the time of his employment, as  
22 discussed above. Finally, payment of all of the rents to Pope  
23 defrayed only a portion of his out-of-pocket expenses and  
24 constituted only a small fraction of the total compensation he  
25 claimed entitlement to.

26 In sum, Robert's rents argument is based on a false premise:  
27 that his alleged 50% community property interest in the rents  
28 prohibited the bankruptcy court from authorizing use of all of

1 the rents to pay compensation to Pope. As explained above, the  
2 Bankruptcy Code explicitly permits such use of § 541(a)(2) estate  
3 property.<sup>13</sup> Because Robert's rents argument is fatally flawed,  
4 it does not support reversal of the bankruptcy court's  
5 compensation order.

6 As for the bankruptcy court's denial of the reconsideration  
7 motion, Robert has not focused on that ruling in his appeal  
8 briefs. Moreover, to the extent it pertained to Robert, the  
9 reconsideration motion merely reiterated the same types of  
10 arguments Robert had made in his opposition to the Trustee's  
11 compensation motion. Accordingly, for the same reasons we affirm  
12 the bankruptcy court's compensation order, we may affirm its  
13 denial of the motion for reconsideration. See Am. Ironworks &  
14 Erectors, Inc., 248 F.3d at 899 (holding that, when the  
15 appellants' motion for reconsideration merely reargued their  
16 original position, trial court did not abuse its discretion in  
17 denying the reconsideration motion).

18 Robert's appeal briefs contain other complaints regarding  
19 the bankruptcy court's rulings and the Trustee's actions. These  
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21 <sup>13</sup>Robert's rents argument suggests he believes that, under  
22 California law, his 50% share of community property could not be  
23 used to pay a separate debt of Charlene's, including any  
24 compensation owed to Pope. Assuming without deciding that this  
25 is a correct statement of California law, it would be preempted  
26 to extent it conflicted with the Bankruptcy Code provisions  
27 explicitly permitting the court to authorize payment of  
28 administrative expense claims from § 541(a)(2) estate property.  
See 6 Collier on Bankruptcy ¶ 726.05[1] (Alan N. Resnick and  
Henry J. Sommer, eds., 16th ed. 2012) (citing In re Teel, 34 B.R.  
at 764 and stating: ". . . where there are differences between  
the bankruptcy distribution scheme and state law, the state law  
scheme is preempted.").

1 additional complaints can be categorized as: (1) irrelevant to  
2 the orders on appeal, (2) incomprehensible, and/or (3) patently  
3 inconsistent with the record. It suffices for us to say that  
4 none of these other complaints justify reversal of the orders on  
5 appeal.

6 **CONCLUSION**

7 For all of the reasons set forth above, we AFFIRM the  
8 bankruptcy court's orders granting the Trustee's compensation  
9 motion and denying the reconsideration motion.

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