

NOV 28 2012

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. CC-12-1144-DHKi
)	
MARCELO BRITTO GOMEZ,)	Bk. No. 11-26905-TBD
)	
Debtor.)	Adv. No. 11-02360-TBD
_____)	
)	
CARTER STEPHENS, ¹)	
)	
Appellant,)	
)	
v.)	MEMORANDUM²
)	
LORI SMITH, ESQ.;)	
MARCELO BRITTO GOMEZ,)	
)	
Appellees.)	
_____)	

Argued and Submitted on November 15, 2012
at Pasadena, California

Filed - November 28, 2012

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

Honorable Thomas B. Donovan, Bankruptcy Judge, Presiding

Appearances: _____
The Appellant, Carter Stephens, argued pro se;
Douglas Crowder, Esq. argued for Appellee Marcelo
Britto Gomez.

Before: DUNN, HOLLOWELL, and KIRSCHER, Bankruptcy Judges.

¹ While the BAP docket is captioned with the correct spelling of the Appellant's name "Carter Stephens," the bankruptcy docket is captioned incorrectly as "Carter Stevens."

² 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.

1 Plaintiff, Carter Stephens ("Appellant"), filed an
2 adversary complaint ("Adversary Proceeding") seeking to except
3 from discharge debts owed to Appellant by debtor defendant
4 Marcelo Britto Gomez ("Appellee") under § 523(a)(2)(A)³ and
5 (a)(6) on the bases that the debts arose from Appellee's false
6 pretenses and caused Appellant willful and malicious injury,
7 respectively. Due to the failure of Appellant's attorney to
8 file status reports timely, appear at status conference
9 hearings, and respond to discovery requests on several
10 occasions, as well as Appellant's failure to find new counsel,
11 the bankruptcy court dismissed the Adversary Proceeding for
12 failure to prosecute. Appellant filed two subsequent motions
13 for reconsideration, both of which the bankruptcy court
14 summarily denied without making separate findings of fact or
15 conclusions of law. Appellant then appealed from the dismissal
16 and the denial of the first motion for reconsideration.
17 However, the BAP motions panel (1) determined that appellate
18 jurisdiction existed only to hear the appeal from the denial of
19 the first motion for reconsideration because Appellant did not
20 timely appeal the dismissal order and (2) ordered that the scope
21 of the appeal be limited to denial of the first motion for
22 reconsideration. We VACATE the bankruptcy court's order on the
23 first motion for reconsideration and REMAND for findings of fact
24 and conclusions of law.

25
26 ³ Unless otherwise indicated, all chapter, section and
27 rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-
28 1532, and the Federal Rules of Bankruptcy Procedure, Rules 1001-
9037. The Federal Rules of Civil Procedure are referred to as
"Civil Rules."

1 **I. FACTS**

2 The limited record presented in this appeal is not very
3 helpful or illuminating. To aid our determinations, the Panel
4 has reviewed the docket and documents filed in the Adversary
5 Proceeding, Case No. 11-02360-TBD. See O'Rourke v. Seaboard
6 Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 958 (9th Cir.
7 1989) (court may take judicial notice of underlying bankruptcy
8 records).

9 This appeal is complicated procedurally, as noted above,
10 because, although Appellant appealed from both the order
11 dismissing the Adversary Proceeding and an order denying
12 Appellant's first motion for reconsideration of the dismissal
13 order, the motions panel limited the scope of review to denial
14 of the motion for reconsideration filed on February 27, 2012
15 ("Motion"), as the notice of appeal was untimely as to the
16 dismissal order.⁴ Therefore, the facts set forth below are
17 limited to those bearing on the Motion.

18 On April 19, 2011, Appellee filed a voluntary petition for
19 chapter 7 relief. On June 15, 2011, Appellant filed the
20 Adversary Proceeding.

21 On September 1, 2011, the bankruptcy court held a first
22 status conference in the Adversary Proceeding. Appellant's
23 attorney, Lori Smith ("Smith"), failed to appear or file the
24 required pre-hearing status report. However, Appellant did
25 appear and indicated that Appellant believed that Smith would

26 _____
27 ⁴ The procedural and substantive details of the motions
28 panel's decision to limit the scope of review are discussed *infra*
at notes 7 and 8.

1 appear and was handling the case. Appellant also expressed
2 concern about Smith's failure to communicate with Appellant and
3 failure to appear, causing Appellant to proceed without counsel.
4 The bankruptcy court explained to Appellant the nature of the
5 required status report and that Appellant could either terminate
6 Smith's representation and obtain new counsel or appear pro se.
7 The bankruptcy court further warned Appellant that "[o]ne way or
8 the other, [Appellant has] to do something to move this case
9 ahead . . .," and that after terminating Smith, Appellant would
10 have personal responsibility to prosecute the Adversary
11 Proceeding in an effective way. Hr'g Tr. (Sept. 1, 2011) at
12 7:12-13; 11:3-8. The bankruptcy court emphasized that failure
13 to file the status report was a ground for dismissal and that a
14 status report would be required two weeks in advance of the
15 continued hearing which the bankruptcy court would schedule.
16 On January 13, 2012, Appellee filed a motion to dismiss the
17 Adversary Proceeding for lack of prosecution under Rule 7041.⁵
18 On February 2, 2012, the bankruptcy court held a continued
19 status conference in the Adversary Proceeding and also
20 considered Appellee's motion to dismiss. Again, Smith failed to
21 file the required status report, but did appear at the hearing.
22 The bankruptcy court began by noting that the case was seven
23 months old. The court then outlined the standards required for
24 diligent prosecution of the case under the local rules including

25
26 ⁵ The motion also was brought pursuant to Local Rule
27 7041-1(a) which provides that "[a] proceeding that has been
28 pending for an unreasonable period of time without any action
having been taken therein may be dismissed for want of
prosecution upon notice and opportunity to request a hearing."

1 sharing information and communication between the parties. It
2 concluded that "[the court] pretty consistently [had] not had
3 much of a showing of any compliance with standards that I've
4 just outlined from the Plaintiff's side." Id. at 1:21-25,
5 2:1-8.

6 The bankruptcy court initially warned that "[the late
7 filing of reports] is unacceptable, and if that happens one more
8 time in this case, this [Adversary Proceeding] will be
9 dismissed." Id. at 2:11-13. Further, the court made clear that
10 "if, [Smith fails] to follow our rules and procedures, as
11 outlined in our Local rules, and as I've announced in this court
12 to you before, one more time, this case will be dismissed for
13 lack of diligent prosecution." Id. at 2:14-17. Before hearing
14 from Smith, the court concluded by saying that "this case is
15 wasting a lot of the Defendant's time. This case is wasting a
16 lot of the Court's time, and this is probably one of the busiest
17 courts in the country." Id. at 4:2-5.

18 Smith first alleged that "there has been a complete and
19 irredeemable breakdown of relationship between the client and
20 the attorney." Id. at 4:16-18. Smith further told the court
21 that:

22 [Appellant] has refused to -- to sign a substitution
23 of attorney. [Appellant] has made a terrorist threat
24 against me. [Appellant] has been alleged to have
25 sexually assaulted, on two separate occasions, one of
26 the women that was working on his case. [Appellant]
has filed a complaint against me with the State Bar. .
. . . I've been advised to get out of any cases I'm
with [Appellant] as soon as possible. Id. at 5:20-25,
5:1-2.

27 Smith then asked the bankruptcy court if a court security
28 officer could accompany Smith out of the courtroom because Smith

1 was afraid of Appellant. The bankruptcy court assured Smith
2 that an escort would be provided. Finally, Smith alleged that
3 Appellant and Smith did not have a fee agreement which covered
4 fees related to trial and that Appellant insisted that Smith go
5 to trial without further payment.

6 The bankruptcy court then gave Appellant an opportunity to
7 speak to the allegations to which the Appellant responded that
8 "100-percent they're lies." Id. at 6:21. Appellant told the
9 court that Appellant had paid Smith an \$8,500 retainer, which
10 Smith had requested, and Smith had failed to appear at six
11 hearings, including hearings before the bankruptcy court and
12 hearings in "other courts."⁶ Appellant concluded, requesting
13 from the court time to find new counsel, saying that:

14 I'm going to need counsel, and since Ms. Smith has not
15 fulfilled her obligation for the retention and the
16 retaining by me giving her money, I would like that -
17 the retainer back so that I can obtain counsel that
18 are viable, very reliable counsel, so that I can
19 continue this. Id. at 8:22 - 9:5.

18 The bankruptcy court then proceeded to dismiss the
19 Adversary Proceeding for lack of diligent prosecution. As bases
20 for its ruling, the bankruptcy court noted that the case had
21 been pending for seven months, and for the court to learn of the
22 failed relationship between Smith and Appellant at this late
23 stage was "an inexcusable burden on the [Appellee], and on the
24 legal process, and on this Court." Id. at 9:13-20. On February
25

26 ⁶ Though the record is not entirely clear, the "other
27 court" hearings are presumably hearings in which Smith was to
28 appear as Appellant's attorney in the related prepetition state
court fraud case against Appellee.

1 8, 2012, the bankruptcy court entered a written order dismissing
2 ("Dismissal Order") the Adversary Proceeding for the reasons
3 stated on the record at the February 2, 2012 hearing.

4 On February 27, 2012, Appellant in pro se filed the Motion,
5 nineteen days after the date of entry of the Dismissal Order.
6 On March 1, 2012, the court summarily denied the Motion by
7 writing "Motion denied" in handwriting in the upper-right corner
8 of the first page of the Motion, dated and initialed immediately
9 below. No findings of fact or conclusions of law were docketed
10 separately, nor written on the face of the Motion.

11 On March 13, 2012, Appellant filed a notice of appeal
12 ("Notice") from the Dismissal Order and the March 1, 2012 denial
13 of the Motion. On May 7, 2012, the motions panel limited the
14 scope of the appeal to review of the Motion because the Notice
15 of Appeal was untimely as to the Dismissal Order,⁷ but not as to
16 the Motion.⁸

17
18 ⁷ The motions panel determined that because the Motion
19 pursuant to Civil Rule 59 or Civil Rule 60, made applicable in
20 adversary proceedings by Rule 9023 and Rule 9024 respectively,
21 was not filed within fourteen days after the Dismissal Order was
22 entered, the fourteen day time limit to file a notice of appeal
23 was not tolled pursuant to Rule 8002(b). Therefore, the motions
24 panel held that no jurisdiction existed to hear the appeal of the
25 Dismissal Order. However, because the denial of the Motion
itself was appealed within fourteen days, pursuant to
Rule 8002(a), jurisdiction was proper as to denial of the Motion.
Order of Motions Panel re "motion for extension of time, scope of
appeal & completion of the record" ("Limiting Order")(granted in
part), May 7, 2012.

26 ⁸ On June 7, 2012, Appellant filed a "Request for BAP to
27 Consider Dismissal" which the motions panel considered as an
28 untimely motion for reconsideration of the Limiting Order.
Though untimely, the motions panel addressed the merits of the

(continued...)

1 **II. JURISDICTION**

2 The bankruptcy court had jurisdiction under 28 U.S.C.
3 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.
4 § 158.

5 **III. ISSUES**

6 1. Whether the bankruptcy court failed to make sufficient
7 findings of fact and conclusions of law to allow for meaningful
8 review.

9 2. Whether the bankruptcy court abused its discretion in
10 denying the Motion.

11 **IV. STANDARDS OF REVIEW**

12 We review the bankruptcy court's denial of the Motion for
13 abuse of discretion.⁹ Arrow Elecs., Inc. v. Justus
14 (In re Kaypro), 218 F.3d 1070, 1073 (9th Cir. 2000); Sewell v.
15 MGF Funding, Inc. (In re Sewell), 345 B.R. 174, 178 (9th Cir.
16 BAP 2007). We apply a two-part test to determine objectively
17 whether the bankruptcy court abused its discretion. United
18 States v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir.
19 2009)(en banc). First, we "determine de novo whether the
20 bankruptcy court identified the correct legal rule to apply to

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22 ⁸(...continued)
23 motion and denied the motion by order entered on August 20, 2012.
24 Order of Motions Panel re "Appellant's request for BAP to
consider dismissal" (denied), August 20, 2012.

25 ⁹ The Civil Rules do not recognize motions for
26 reconsideration. Captain Blythers, Inc. v. Thompson (In re
27 Captain Blythers, Inc.), 311 B.R. 530, 539 (9th Cir. BAP 2004).
28 The Civil Rules do provide, however, two avenues through which a
party may obtain post-judgment relief: (1) a motion to alter or
amend judgment under Civil Rule 59; and (2) a motion for relief
from judgment under Civil Rule 60.

1 the relief requested." Id. Second, we examine the bankruptcy
2 court's factual findings under the clearly erroneous standard.
3 Id. at 1262 & n.20. De novo means review is independent, with
4 no deference given to the trial court's conclusion. See First
5 Ave. W. Bldg., LLC v. James (In re Onecast Media, Inc.),
6 439 F.3d 558, 561 (9th Cir. 2006).

7 Where a party files a motion for reconsideration within
8 14 days following the date of entry of the judgment or order,
9 the motion is treated as a motion to alter or amend the judgment
10 under Civil Rule 59(e). Am. Ironworks & Erectors, Inc. v.
11 N. Am. Constr. Corp., 248 F.3d 892, 898-99 (9th Cir. 2001)
12 (citation omitted). Such a motion is "analogous to a motion for
13 new trial or to alter or amend the judgment pursuant to [Civil
14 Rule] 59 as incorporated by Rule 9023." United Student Funds,
15 Inc. v. Wylie (In re Wylie), 349 B.R. 204, 209 (9th Cir. BAP
16 2006).

17 However, where the fourteen day time for appeal has
18 expired, a motion for reconsideration should be construed as a
19 motion for relief from judgment under Civil Rule 60(b). Negrete
20 v. Bleau (In re Negrete), 183 B.R. 195, 197 (9th Cir. BAP
21 1995)(citing In re Cleanmaster Indus., Inc., 106 B.R. 628, 630
22 (9th Cir. BAP 1989)(internal citations omitted)). Civil
23 Rule 60(b) provides that relief may be granted from an order for
24 several reasons, including (1) mistake, inadvertence, surprise,
25 or excusable neglect; (2) newly discovered evidence; and (3) any
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27
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1 other reason that justifies relief.¹⁰ Relief from judgment for
2 "any other reason" under Civil Rule 60(b)(6) should be limited
3 only to exceptional or extraordinary circumstances, and the
4 moving party bears the burden of establishing the existence of
5 such circumstances. Negrete, 183 B.R. at 197. In the
6 circumstances of this appeal, we conclude that analysis under
7 Civil Rule 60(b) applies.

8 A motion for reconsideration of an order dismissing an
9 adversary proceeding is a contested matter under Rule 9014,
10 subject to Civil Rule 52(a) by incorporation under Rule 7052,
11 which requires the bankruptcy court to find the facts
12 specifically and state its conclusions of law separately. In
13 the absence of complete findings, we may vacate a judgment and
14 remand the case to the bankruptcy court to make the required
15 findings or develop further evidence. In re First Yorkshire

16
17 ¹⁰ Civil Rule 60(b) provides that:

18 On motion and just terms, the court may relieve a party
19 or its legal representative from a final judgment,
20 order, or proceeding for the following reasons:

21 (1) mistake, inadvertence, surprise, or excusable
neglect;

22 (2) newly discovered evidence that, with reasonable
23 diligence, could not have been discovered in time to
move for a new trial under Rule 59(b);

24 (3) fraud (whether previously called intrinsic or
extrinsic), misrepresentation, or misconduct by an
opposing party;

25 (4) the judgment is void;

26 (5) the judgment has been satisfied, released, or
27 discharged; it is based on an earlier judgment that has
been reversed or vacated; or applying it prospectively
is no longer equitable; or

28 (6) any other reason that justifies relief.

1 Holdings, Inc., 470 B.R. 864, 871 (9th Cir. BAP 2012)(citing
2 United States. v. Ameline, 409 F.3d 1073, 1079 (9th Cir. 2005));
3 Rule 8013.

4 V. DISCUSSION

5 The bankruptcy court failed to make specific findings of fact
6 and conclusions of law in denying the Motion.

7 1. Arguments on Appeal

8 Appellant argues on appeal that gross negligence of counsel
9 is an appropriate ground for relief pursuant to Civil Rule 60(b)
10 from an order of dismissal for failure to prosecute, and,
11 therefore, the bankruptcy court abused its discretion by denying
12 the Motion on the facts presented.

13 For support, Appellant first cites Cnty. Dental Servs. v.
14 Tani, 282 F.3d 1164, 1168 (9th Cir. 2002), where the Ninth
15 Circuit held that a default judgment may be set aside under the
16 "catch all" clause of Civil Rule 60(b)(6). Specifically, the
17 court held that "a party merits relief under Rule 60(b)(6) if he
18 demonstrates 'extraordinary circumstances which prevented or
19 rendered him unable to prosecute [his case].'" Id. (citing
20 Martella v. Marine Cooks & Stewards Union, 448 F.2d 729, 730
21 (9th Cir. 1971) (per curiam)). To be entitled to relief, "the
22 party must demonstrate both injury and circumstances beyond his
23 control that prevented him from proceeding with the prosecution
24 or defense of the action in a proper fashion." Tani, 282 F.3d
25 at 1168 (citing United States v. Alpine Land & Reservoir Co.,
26 984 F.2d 1047, 1049 (9th Cir. 1993)).

27 In holding that gross negligence of counsel may provide a
28 basis for relief, the Tani court distinguished negligent acts of

1 counsel, which are attributable to the client under an agency
2 theory, from the more unusual case of extreme or gross
3 negligence which is "neglect so gross that it is inexcusable."
4 Id. at 1168. For example, the Tani court cited L.P. Steuart,
5 Inc. v. Matthews, 329 F.2d 234, 235 (D.C. Cir. 1964), for the
6 proposition that "[Civil Rule] 60(b)(6) 'is broad enough to
7 permit relief when as in this case personal problems of counsel
8 cause him grossly to neglect a diligent client's case and
9 mislead the client.'" Tani, 282 F.3d at 1169. Further, even
10 though a client choosing incompetent counsel typically risks
11 suffering any negative consequences as a result, a client should
12 not "suffer the ultimate sanction of losing his case without any
13 consideration of the merits because of his attorney's neglect
14 and inattention," for example where there is evidence of
15 counsel's "blatant disregard for explicit [court] orders." Id.
16 at 1168-69 (citing Shepard Claims Serv., Inc. v. William Darrah
17 & Assocs., 796 F.2d 190, 195 (6th Cir. 1986); Carter v. Albert
18 Einstein Med. Ctr., 804 F.2d 805, 806 (3d Cir. 1986)).

19 Because the appellant's lawyer in the Tani case "virtually
20 abandoned" the client by failing, inter alia, to proceed despite
21 court orders, to attend hearings and file papers, and most
22 especially, by duping the client by representing to the client
23 that the case was proceeding properly, the Ninth Circuit
24 ultimately reversed the trial court, which had held the
25 appellant responsible for the lawyer's failures, and held that
26 the "unknowing client should not be held liable on the basis of
27 a default judgment resulting from an attorney's grossly
28 negligent conduct, and that in such cases sanctions should be

1 imposed on the lawyer, rather than on the faultless client.”
2 Tani, 282 F.3d at 1168, 1171. Underlying the holding, the Tani
3 court explained that because default is an extreme measure, “the
4 judicial system loses credibility as well as the appearance of
5 fairness, if the result is that an innocent party is forced to
6 suffer drastic consequences.” Id. at 1170.¹¹

7 Appellant further argues that an attorney's failure to
8 prosecute a case on behalf of the plaintiff is an “extraordinary
9 circumstance” under Civil Rule 60(b) warranting relief from an
10 order of dismissal, citing Lal v. Cal., 610 F.3d 518, 524 (9th
11 Cir. 2010). In Lal, the Ninth Circuit approvingly cited Tani
12 with respect to default judgments and applied the Tani reasoning
13 to gross negligence of counsel resulting in dismissal with
14 prejudice for failure to prosecute. Id. The court reasoned
15 that “[d]ismissal with prejudice under [Civil] Rule 41(b) for
16 failure to prosecute is the converse of a default judgment. In
17 both instances, the consequence of the attorney's action (or
18 inaction) is a loss of the case on the merits. The only
19 significant difference is that the plaintiff rather than the
20 defendant suffers the adverse judgment.” Id. In Lal, the
21 plaintiff's counsel failed to make disclosures, attend status
22

23 ¹¹ The Ninth Circuit also disagreed with the district
24 court that the appellant's remedy should be a separate action for
25 malpractice, rather than relief from the default judgment. The
26 Ninth Circuit reasoned that while malpractice was a possibility,
27 the remedy was insufficient due to delay, increased load on the
28 courts, and the uncertainty of receiving a money judgment in a
malpractice action, while the client may have to pay out
substantial sums before the action concludes many years in the
future. Id. at 1171.

1 conferences, and attend hearings. Id. at 525. In addition, as
2 in Tani, the attorney in Lal deliberately misled the client
3 regarding the status of the case. Id. The Lal court reversed
4 the trial court and held that the Civil Rule 60(b) motion for
5 relief should have been granted. Id. at 527.

6 Appellant alleges by declaration on appeal that Appellant's
7 attorney, Smith, failed to file status reports, failed to show
8 up for several hearings, failed to oppose the motion to dismiss,
9 failed to respond to discovery requests, failed to return phone
10 calls, and was untruthful about the status of the case.

11 Stephens Dec. (July 2012) at ¶ 2. Further, Smith declared that
12 she was found guilty by the State Bar of California for, inter
13 alia, not properly communicating with the Appellant and not
14 responding to discovery with respect to the Adversary
15 Proceeding. Smith Dec. (June 11, 2012) at ¶ 3. Smith further
16 states that Appellant filed the State Bar complaint prior to the
17 February 2, 2012 hearing at which Smith failed to produce a
18 status report, failed adequately to explain the failure to
19 produce discovery, and alleged a total breakdown of
20 communications with Appellant. Id. at ¶ 2. Smith states
21 finally that "[b]ecause of my behavior, Mr. Stephens was unable
22 to present or have presented his case properly. . . ." Id. at
23 ¶ 5.

24 In response, Appellee first argues that the Motion should
25 be treated as a motion pursuant to Civil Rule 59 rather than
26 Civil Rule 60 because, according to Appellee without reference
27 to any dates in Appellee's Opening Brief, Appellant filed the
28 Motion within the fourteen day appeal period. However, Appellee

1 is in error because, as noted above, the Motion was filed on
2 February 27, 2012, nineteen days after the Dismissal Order was
3 entered. Next, Appellee argues that the bankruptcy court
4 properly denied the Motion under Civil Rule 60(b), arguing that
5 Appellant failed to show that any of the Civil Rule 60(b)
6 conditions were present in this case. Appellee alleges that
7 Appellant produced no new evidence, nor evidence of fraud, nor
8 that the order is void, nor finally that the order has been
9 "satisfied, released, or discharged." Appellee states that
10 because Appellant had ample time, after warning from the
11 bankruptcy court, to change counsel during the eight months
12 while the case was pending, Appellant was not denied effective
13 assistance of counsel. Appellee further contends that under the
14 reasoning of In re Williams, 287 B.R. 787 (9th Cir. 2002),
15 holding that Appellant has the burden of providing an adequate
16 record on appeal, the appeal should be dismissed because the
17 record is inadequate to show that the bankruptcy court abused
18 its discretion.

19 2. New Evidence in the Motion for Reconsideration

20 In the Motion, Appellant urged the court to consider that
21 the order had been granted "without full facts being presented
22 in the case." Though many of the facts asserted in the Motion
23 are simply reassertions of facts that Appellant alleged during
24 the two status conference hearings or in other filings,
25 Appellant alleged that after several requests for return of
26 Appellant's file, Smith refused to return Appellant's complete
27 file. Appellant further alleged that Appellant did search for
28 other attorneys and that attorneys with whom he spoke gave

1 Appellant additional information with respect to Smith's
2 difficulties serving clients. Appellant also alleged that on a
3 weekly basis, Appellant asked Smith's office to provide status
4 information and a list of completed activities with respect to
5 the Adversary Proceeding, which Appellant further alleges was
6 provided, but which was falsified to include completion of tasks
7 not actually performed.

8 In addition, Appellant gave more specific information about
9 the larger scope of Smith's difficulties and Appellant's
10 knowledge of those issues by alleging that not until "well into
11 our history" did Appellant learn that "Smith had been reported
12 [by four (4)] other clients, with [eleven] incidents, for lack
13 of doing her job"

14 3. Bankruptcy Court's Holding

15 The court denied the Motion by writing "Motion denied" in
16 handwriting in the upper-right hand corner of the Motion papers
17 and initialing immediately below, with nothing more. No
18 separate findings of fact or conclusions of law were docketed,
19 nor written on the face of the Motion. Because the bankruptcy
20 court did not make any findings of fact or conclusions of law
21 with regard to the Motion, the Panel does not have a basis for
22 evaluating whether the bankruptcy court abused its discretion in
23 this appeal. Therefore, the matter is VACATED and REMANDED to
24 the bankruptcy court for findings of fact and conclusions of law
25 pursuant to Rules 7052 and 9014.¹²

26
27 ¹² On March 9, 2012, Appellant filed a second motion for
28 reconsideration of the dismissal of the Adversary Proceeding
(continued...)

1 **VI. CONCLUSION**

2 The bankruptcy court failed to make specific findings of
3 fact and conclusions of law on the record sufficient to allow
4 review of its denial of the Motion when it made only a
5 handwritten statement on the face of the Motion that the Motion
6 was denied. Accordingly, we VACATE the order denying the Motion
7 and REMAND for findings of fact and conclusions of law
8 consistent with this Memorandum disposition.
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23 ¹²(...continued)
24 ("Second Motion"). On March 23, 2012, the bankruptcy court
25 denied the Second Motion by written order stating in one line
26 that "Mr. Stephens' Motion for Reconsideration of the order
27 denying his Motion for Reconsideration is hereby DENIED." Though
28 not before us, the Panel would not be able to review adequately
denial of the Second Motion any more than the denial of the
Motion in this appeal due to the same lack of findings of fact
and conclusions of law.