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NOT FOR PUBLICATION

HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP Nos. NV-04-1089-BKMo  
) NV-04-1577-BKMo  
7 CHARLES F. GIAMPA, ) (related appeals)  
) )  
8 Debtor. )  
) )  
9 ) Bk. No. 02-13287-RCJ  
) )  
10 VICTORIA GIAMPA, ) Adv. No. 02-01305  
) )  
11 Appellant, )  
) )  
12 v. ) **MEMORANDUM**<sup>1</sup>  
) )  
13 CHARLES F. GIAMPA, )  
) )  
14 Appellee. )

Argued and Submitted on November 30, 2005  
at Las Vegas, Nevada

Filed - January 6, 2006

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

Hon. Eileen Hollowell and Hon. Bruce A. Markell,  
Bankruptcy Judges, Presiding<sup>2</sup>

Before: BRANDT, KLEIN, and MONTALI, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except when relevant under the doctrines of law of the case, res judicata or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

<sup>2</sup> The two matters on appeal were heard and resolved by different judges (NV-04-1089 - Judge Hollowell; NV-04-1577 - Judge Markell). A third judge, Judge Lloyd King, signed the first order on appeal on behalf of Judge Hollowell.

1 Appellant twice moved for reconsideration or vacation of the order  
2 approving the in-court settlement of a bankruptcy adversary proceeding  
3 that she had brought to determine the dischargeability of her  
4 ex-husband's obligations under an order previously entered by a Nevada  
5 state court in an underlying marital dissolution. Agreeing with the  
6 bankruptcy court that appellant did not establish grounds for receding  
7 from the order resolving her adversary proceeding, which she had agreed  
8 to in open court, we AFFIRM.

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### I. FACTS

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Appellant Victoria Giampa and Charles Giampa were divorced in 1998 in Nevada and entered into a divorce settlement agreement resolving property and support issues (including a property settlement equalization payment), which was incorporated into the Nevada court's decree ("Divorce Settlement"); we use the parties' terminology rather than "dissolution of marriage" as used in 11 Nev. Rev. Stat. Ch. 125.

On 28 March 2002, Charles filed a chapter 13<sup>3</sup> bankruptcy case, which was converted to chapter 7 and resulted in his discharge in September 2002.

With the assistance of counsel, Victoria filed a timely complaint in the chapter 7 case to establish as nondischargeable Charles' obligations under the Divorce Settlement under §§ 523(a)(5) and (15).<sup>4</sup>

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<sup>3</sup> Absent contrary indication, all section and chapter references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330. "Rule" references are to the Federal Rules of Bankruptcy Procedure, "FRCP," to the Federal Rules of Civil Procedure, and "FRE," to the Federal Rules of Evidence.

<sup>4</sup> Appellant did not include the complaint and several other relevant documents in the excerpts of record. We obtained copies from the bankruptcy court's docket via PACER, and take judicial notice of them. FRE 201.

1 The adversary proceeding was resolved and terminated following a  
2 settlement conference by an order entered 9 September 2003 in open court,  
3 on the record and in Victoria's presence, and with her explicit consent  
4 and that of her counsel ("Settlement Order").

5 The Settlement Order provided that child support, alimony, alimony  
6 arrears, and the property settlement equalization payment are  
7 nondischargeable and called for various property transfers to satisfy the  
8 obligations. It further required Charles to execute a confession of  
9 judgment for \$10,000, to be recorded in the event of default, and that  
10 he refrain from seeking discharge of any of the obligations. In  
11 addition, it barred both Charles and Victoria from seeking modification  
12 of the terms of the agreement.

13 On 18 November 2003, Victoria, now representing herself, filed an  
14 untimely notice of appeal of the Settlement Order, which appeal was  
15 dismissed. She concurrently filed a motion seeking, first, to vacate the  
16 Settlement Order under FRCP 60(b), applicable in bankruptcy via Rule  
17 9024, second, to obtain an order of contempt, and, third, to obtain an  
18 order conforming the Settlement Order to the evidence.<sup>5</sup> She alleged that  
19 her counsel, Charles, and his counsel had committed a fraud on the court.  
20 Victoria alleged that she had been misled as to the value of certain  
21 assets, that financial documents had been forged, that assets had been  
22 fraudulently transferred, and the Charles had not complied with the  
23 Divorce Settlement.

24 Judge Hollowell denied the motions, reasoning that the motion for  
25 reconsideration had not been filed in time to affect the finality of the  
26 Settlement Order terminating the adversary proceeding, that none of the

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28 <sup>5</sup> Also not in appellant's excerpts; again, we take judicial  
notice from the bankruptcy court's docket.

1 requirements for obtaining relief from the Settlement Order had been met,  
2 and that the court lacked jurisdiction over the counsel. Further, she  
3 observed:

4           The parties have agreed that the [Divorce Settlement] is  
5 not dischargeable . . . so everything that this Court can do  
6 has been done.

7           We are not a domestic relations court. And if you  
8 believe that things have happened that give you a cause of  
9 action in domestic relations court, then that's where you need  
10 to prosecute it.

11 . . . .

12           Much of what you've argued in your pleadings goes back to  
13 the original property settlement agreement. This Court does  
14 not have jurisdiction over the original property settlement  
15 agreement.

16           All of the relief is denied, and I'm going to caution you  
17 that if you continue to file pleadings in this court against  
18 the attorneys you are going to be subject to some sanctions by  
19 the Court . . . .

20 . . . .

21           If you have objections, then you find the right forum to  
22 do it [in]. If you have a disagreement with your former  
23 lawyer, then you file the appropriate bar complaint. We are  
24 not the court to bring those actions in, so the relief is  
25 denied.

26 Transcript, 19 December 2003, pages 4-5. An order denying the motions  
27 was entered on 3 February 2004; Victoria timely appealed (No. 04-1089).

28           As the order did not dispose of all the claims in the adversary  
proceeding, on 22 September 2004 we issued an order requiring Victoria  
to obtain a final judgment. At her request, the bankruptcy court entered  
an order on 10 November 2004 confirming that the adversary proceeding had  
been dismissed in September of 2003.

          Meanwhile, on 22 October 2004, Victoria filed another very similar  
"motion for reconsideration pursuant to FRCP 60(b) . . .," which included

1 motions to amend her complaint and for an evidentiary hearing.<sup>6</sup> She  
2 again sought to have the Settlement Order set aside on the basis of  
3 fraud. Judge Markell denied that motion, struck the amended complaint,  
4 and warned Victoria of sanctions should she again file a meritless  
5 motion. Order Denying . . . Second Amended Motion for Reconsideration  
6 . . . , 8 November 2004. Victoria timely appealed (No. 04-1577). The  
7 appeals were consolidated for briefing.

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## II. JURISDICTION

10 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334 and  
11 § 157(b) (1) and (B) (2) (I), and we do under 28 U.S.C. § 158(c).

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## III. ISSUES

14 A. Whether we should strike appellant's supplemental brief and  
15 supplemental excerpts of record.

16 B. Whether the bankruptcy court abused its discretion in denying  
17 appellant's motion to vacate under FRCP 60(b).

18 C. Whether the bankruptcy court abused its discretion in denying  
19 appellant's second motion to reconsider.

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## IV. STANDARD OF REVIEW

22 A bankruptcy court's ruling on a motion for relief from judgment is  
23 reviewed for abuse of discretion. In re Hammer, 112 B.R. 341, 345 (9th  
24 Cir. BAP 1990), aff'd, 940 F.2d 524 (9th Cir. 1991). A bankruptcy court  
25 necessarily abuses its discretion if it bases its decision on an  
26 erroneous view of the law or clearly erroneous factual findings. Cooter

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28 <sup>6</sup> Also not in appellant's excerpts; again, we take judicial  
notice from the bankruptcy court's docket.

1 & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1991). Under the abuse of  
2 discretion standard, we must have a definite and firm conviction that the  
3 bankruptcy court committed a clear error of judgment in the conclusion  
4 it reached before reversal is proper. In re Black, 222 B.R. 896, 899  
5 (9th Cir. BAP 1998).

## 7 **V. DISCUSSION**

8 Victoria's briefs are lengthy and difficult to understand. The  
9 essence of her argument is that the bankruptcy court should have set  
10 aside the Settlement Order because she had entered into it based on  
11 erroneous information given to her by Charles and his attorneys, and  
12 because she was inadequately represented. She makes similar allegations  
13 regarding the Divorce Settlement.

14 Victoria does not argue that the bankruptcy court erred in denying  
15 her motion for contempt against the attorneys for lack of personal  
16 jurisdiction. Accordingly, she has waived that argument, In re Sedona  
17 Inst., 220 B.R. 74, 76 (9th Cir. BAP 1998), aff'd, 21 Fed. Appx. 723 (9th  
18 Cir. 2001) and, in any event, the bankruptcy court's conclusion was  
19 correct.

### 21 **A. Supplemental Brief**

22 Victoria submitted a supplemental brief, in which she contends that  
23 she recently discovered that the Nevada Supreme Court suspended her  
24 former counsel from the practice of law on 26 April 2005, and  
25 supplemental excerpts of record containing the state bar's complaint and  
26 the suspension order. She alleges that this development supports her  
27 argument that she did not have effective assistance of counsel during  
28 settlement negotiations. Charles did not object to the supplemental

1 brief in his responsive brief or otherwise. Victoria later filed a reply  
2 brief in which she reiterated the information regarding her former  
3 counsel's suspension.

4 As the information sought to be included is also in the reply brief,  
5 and in any event has no bearing on the merits of this appeal, we will  
6 strike the supplemental brief and the supplemental excerpts.

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8 **B. 04-1089 - First motion for reconsideration**

9 As noted, the bankruptcy court denied Victoria's first  
10 reconsideration motion because it was untimely and because the disputes  
11 related to the Divorce Settlement. Arguably, it was a timely FRCP 60(b)  
12 motion, having been filed within one year of entry of the order. But any  
13 error in this conclusion was harmless, as the motion and evidence did not  
14 demonstrate grounds under FRCP 60(b), which provides in relevant part:

15 On motion and upon such terms as are just, the court may  
16 relieve a party or a party's legal representative from a final  
17 judgment, order, or proceeding for the following reasons: (1)  
18 mistake, inadvertence, surprise, or excusable neglect; (2)  
19 newly discovered evidence which by due diligence could not  
20 have been discovered in time to move for a new trial under  
21 Rule 59(b); (3) fraud (whether heretofore denominated  
intrinsic or extrinsic), misrepresentation, or other  
22 misconduct of an adverse party; . . . ; or (6) any other  
23 reason justifying relief from the operation of the judgment.  
24 The motion shall be made within a reasonable time, and for  
25 reasons (1), (2), and (3) not more than one year after the  
26 judgment, order, or proceeding was entered or taken.

27 Victoria's affidavit<sup>7</sup> filed in the bankruptcy court references  
28 matters that occurred prior to settlement of the adversary proceeding:  
29 primarily, Charles' failure to pay his obligations under the Divorce  
30 Settlement, and the attorney misconduct which prevented her review of the  
31 agreement.

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32 <sup>7</sup> Not in the excerpts of record; again we take judicial notice  
33 from the bankruptcy court's docket.

1 On appeal, Victoria argues that she was misled into agreeing to the  
2 Settlement Order, but she submitted no evidence to support her assertions  
3 that assets were erroneously valued. She cites Charles' deposition and  
4 his § 341 meeting testimony, both in 2002, well before the adversary was  
5 settled. She stated no reason why this information was unavailable when  
6 she agreed to the Settlement Order.

7 Motions for reconsideration that merely revisit the same issues  
8 already ruled upon by the bankruptcy court, or advance supporting facts  
9 that were otherwise available when the issues were originally briefed,  
10 will generally not be granted. In re Branam, 226 B.R. 45, 54 (9th Cir.  
11 BAP 1998), aff'd, 206 F.3d 1350 (9th Cir. 1999) (table).

12 The bankruptcy court did not abuse its discretion in denying the  
13 motion; there was simply no competent evidence to support reconsideration  
14 or relief under FRCP 60(b).

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16 **C. 04-1577 - Second motion for reconsideration**

17 It appears Victoria may have misinterpreted our orders regarding  
18 finality as providing her another opportunity to litigate the issues:  
19 she argues that the Settlement Agreement was not a final order, and that  
20 the adversary proceeding should have been reopened to adjudicate claims  
21 1, 2, 3, and 7. Additionally, she argues that the amounts designated for  
22 support are inadequate, that she was entitled to an award of attorney's  
23 fees, and that Charles breached the Adversary Settlement because he never  
24 executed a confession of judgment.

25 The arguments differ only slightly from her first motion, and the  
26 evidence submitted was virtually identical. Again, Victoria gives no  
27 reason why this information was previously unavailable. Denial of the  
28 second motion was, for the same reasons, not an abuse of discretion.



1 **VI. CONCLUSION**

2 We will strike Victoria's supplemental brief and supplemental  
3 excerpts by separate order.

4 Victoria has not shown that the bankruptcy court abused its  
5 discretion in denying her motions for reconsideration or vacation. We  
6 AFFIRM both orders.

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