NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. NC-10-1169-KiSaH
GERALDINE L. VAN DAMME,	Bk. No. 08-47480
Debtor.	Adversary No. 09-4125
HAMMER 1994 FAMILY TRUST; BILL C. HAMMER, trustee; BILL C. HAMMER, individually,	
Appellants,	
v.	**M E M O R A N D U M**[1]
GERALDINE L. VAN DAMME,	
Appellee.	

Argued and Submitted on October 20, 2010
at San Francisco, California

Filed - February 1, 2011

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

Honorable Leslie Tchaikovsky, Bankruptcy Judge, Presiding

Appearances: John Benedict argued for appellants Hammer 1994 Family Trust, Bill C. Hammer, trustee, and Bill C. Hammer, individually
Christina Ann-Marie DiEdoardo argued for appellee Geraldine L. Van Damme

Before: KIRSCHER, SALTZMAN,[2] and HOLLOWELL, Bankruptcy Judges.

[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 Hon. Deborah J. Saltzman, Bankruptcy Judge for the Central District of California, sitting by designation.

Creditors-Appellants, the Hammer 1994 Family Trust, Bill C. Hammer, trustee, and Bill C. Hammer, individually (collectively "Appellants"), appeal the bankruptcy court's order dismissing their nondischargeability action against Debtor-Appellee, Geraldine L. Van Damme ("Geraldine"),[3] as well as the bankruptcy court's order denying Appellants' motion for summary judgment and its order denying Appellants' motion to reconsider the court's denial of summary judgment. We AFFIRM.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. State Court Action.

This case has a long and contentious history. In the mid-1980's, the Hammer family built a single-family home on property located in Las Vegas, Nevada and have lived there ever since ("Hammer Property"). In January 2004, Geraldine and her husband, Armin Van Damme ("Armin")(collectively "Van Dammes"), purchased their property in the Twin Palms subdivision ("Twin Palms Property"). The Twin Palms Property is adjacent to the Hammer Property although they are in different subdivisions. Sometime in the mid-1980's, developers of the Twin Palms Property erected a stone wall along the common boundary between the Hammer Property and the Twin Palms Property. The following year, developers of the Hammer Property erected a retaining and privacy wall that was constructed approximately one foot to the west of the Twin Palms wall, leaving a "gap" ("Gap") between the two walls. At all times relevant, Appellants owned the Gap.

[3] We intend no disrespect, but for clarity we refer to Mr. and Mrs. Van Damme by their first names.

In June 2004, the Van Dammes demolished a portion of the Twin Palms wall and began constructing a pool grotto using the Hammer Property's wall as an anchor for attaching devices to support associated pool features. Appellants immediately orally advised the Van Dammes that the construction was illegal, that they were trespassing, and requested that Van Dammes cease all work on the pool grotto. Between June 23, 2004, and July 12, 2004, Appellants warned the Van Dammes on at least five occasions of the illegality of their trespass by posting "no trespassing" signs and providing them with copies of the relevant Nevada statutes. All of the signs were removed or destroyed by the Van Dammes. Appellants also sent the Van Dammes three written notices advising them of their trespass. The Van Dammes ignored all of Appellants' warnings and continued construction.

Appellants filed suit against the Van Dammes in the Nevada state court on October 1, 2004, asserting claims for Trespass, Quiet Title, Slander of Title, and Battery (the "State Court Action"). Appellants also sought an injunction requiring the Van Dammes to cease construction of the pool grotto and return the Hammer Property to its prior condition. In response, Van Dammes filed a counterclaim against Appellants asserting claims for Quiet Title, Malicious Use of Process, and Trespass. Van Dammes based their Quiet Title counterclaim on a claim for adverse possession.

Appellants filed two motions for partial summary judgment, one directed at Van Dammes' counterclaim for Quiet Title and the other directed at their Malicious Use of Process and Trespass counterclaims. The Van Dammes did not oppose Appellants' motion

regarding their counterclaim for Quiet Title (they failed to file an opposition or appear at the hearing), but thy did oppose Appellants' motion regarding their counterclaims for Malicious Use of Process and Trespass.

On July 8, 2008, the Nevada state court issued two orders granting partial summary judgment in favor of Appellants and against the Van Dammes. The two orders effectively eliminated the Van Dammes' counterclaims against Appellants, as well as adjudicated Appellants' affirmative claim for Quiet Title - the Gap belonged to Appellants. The first order ("PSJ Order 1") dismissed the Van Dammes' Quiet Title counterclaim, with prejudice. It determined that in three years of litigation the Van Dammes failed to provide a scintilla of admissible evidence to support an adverse interest in the Hammer Property; they had failed to prove even one element of the adverse possession statute. Thus, the Nevada state court concluded that the Van Dammes' counterclaim for Quiet Title was filed in bad faith because no justifiable basis existed for the allegation. Specifically, Van Dammes willfully, intentionally, and deliberately encroached upon the Hammer Property by partially tearing down the Twin Palms wall, and that they, in disregard of multiple warnings to cease and without consent, willfully, intentionally, and deliberately utilized portions of the Hammer Property wall to support the pool grotto. Further, the Van Dammes' conduct was "malicious because [their] actions were without any just cause or excuse and were substantially certain to cause harm to the [Hammer] Property . . . ," as demonstrated by their refusal to cease trespass and construction of the pool

grotto despite Appellants' repeated warnings. The Van Dammes' failure to conduct any due diligence whatsoever prior to construction was another factor showing the "willful and malicious nature of their scheme and substantially certain resulting harm for which there was no just cause or excuse." As a result, the Van Dammes' willful and malicious conduct caused the title of the Hammer Property to become uninsurable, and it caused a cloud on the title which restricted its conveyance and destroyed its value at a time when it was a "seller's" market in Las Vegas.

The second order ("PSJ Order 2") dismissed the Van Dammes' counterclaims for Malicious Use of Process and Trespass, with prejudice. Although the Van Dammes opposed Appellants' underlying motion, they again failed to produce in over three years a shred of admissible evidence to support either claim. PSJ Order 2 further stated that the Van Dammes' actions were done willfully, intentionally and deliberately, and were substantially certain to, and did, result in harm to Appellants.

The Nevada state court tried Appellants' remaining claims over several days in August and October 2008. The final date of trial was set for December 22, 2008. Geraldine filed a chapter 7[4] petition for relief on December 16, 2008. As a result, the State Court Action was stayed as to Geraldine. However, trial continued and was concluded as to Armin. The Nevada state court

[4] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

took the matter of damages under submission.[5] On March 18, 2009, it issued its decision with respect to Armin.

B. The Adversary Proceeding.

On March 6, 2009, Appellants filed their adversary complaint against Geraldine seeking to except from discharge Appellants' debt under section 523(a)(6). Appellants alleged that Geraldine's conduct in creating and continuing to maintain the trespass on the Hammer Property was willful and malicious and caused injury to Appellants and Appellants' real property.

Geraldine, who initially appeared pro se and filed an answer, later moved to dismiss Appellants' complaint pursuant to Fed. R. Civ. P. 12(b)(6) ("FRCP") once she obtained counsel. Appellants opposed. Geraldine's motion to dismiss was denied due to its untimeliness. Geraldine then filed a motion for judgment on the pleadings under FRCP 12(c)("12(c) Motion"). Appellants opposed and filed a Counter-Motion for Summary Judgment on Issue of Collateral Estoppel Effect of Nevada District Court Proceedings ("Motion for Summary Judgment").

In their Motion for Summary Judgment, Appellants argued that PSJ Order 1 and PSJ Order 2 made specific findings that Geraldine's willful and malicious conduct resulted in harm to Appellants, which satisfied the elements of section 523(a)(6). Therefore, contended Appellants, the findings must be given preclusive effect under the doctrine of collateral estoppel, more

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[5] Armin filed his own chapter 7 petition in the Northern District of California before the Nevada state court had issued its decision on the amount of damages. However, the bankruptcy court granted Appellants' motion for relief from stay to permit the decision to be issued as to Armin.

commonly referred to now as issue preclusion. Appellants, erroneously citing Idaho law for the elements of issue preclusion in Nevada, asserted that all five elements had been met, and therefore summary judgment was proper.

Geraldine's 12(c) Motion and Appellants' Motion for Summary Judgment were initially set for hearing on September 15, 2009. However, due to a last-minute "flurry" of paper, the bankruptcy court sua sponte continued the matter to October 5, 2009. The hearing was held on October 5, and the bankruptcy court took the matter under submission. Due to the pending motions, the trial originally set for October 23, 2009, was continued to December 7, 2009.

The bankruptcy court issued its decision on the 12(c) Motion and Motion for Summary Judgment on November 9, 2009. It denied both motions. The bankruptcy court denied Appellants' Motion for Summary Judgment because it determined that one of the elements of issue preclusion - "necessarily determined" - was not satisfied. Although an order had not yet been entered, on November 30, 2009, Appellants filed a motion for rehearing the "order" denying Appellants' Motion for Summary Judgment ("Motion to Reconsider"). On reviewing only Appellants' papers, the bankruptcy court denied the Motion to Reconsider, ruling that Appellants provided no viable arguments for the court to reconsider its original decision. The court restated that summary judgment could not be granted because the Nevada state court's findings and conclusions that Geraldine acted willfully and maliciously were not "legally necessary" to the Quiet Title judgment, and Appellants failed to cite any Nevada authority that

indicated Nevada's quiet title law contained any scienter element. The continued trial date of December 7, 2009, was once again vacated, and trial was rescheduled for May 7, 2010.

The parties were ordered to file their pretrial statements by April 12, 2010, and a pretrial conference was scheduled for April 19, 2010. Geraldine, as ordered, timely filed her pretrial statement, which set forth the legal and factual issues she contended needed to be resolved at trial. On April 13, 2010, instead of filing their pretrial statement, Appellants attempted to file a "Pre-Trial Statement; Motion to Dismiss or to Transfer for Lack of Proper Venue; Alternatively Motion for Summary Judgment; Alternatively to Remand to Nevada State Court to Enter Final Judgment." Appellants lumped the "multiple" motions into one document, failing to file a notice or separate motions for any of them as required by local rule, and proceeded as though all motions would be heard in six days at the April 19 pretrial conference. Substantively, Appellants contended that venue was improper because Geraldine had not established residency in the Northern District of California at the time she filed her bankruptcy petition, and thus her case should be dismissed or transferred to the "Southern" District of Nevada. Alternatively, Appellants asked the bankruptcy court to reconsider its order denying the Motion to Reconsider. Appellants contended that it was necessary for the Nevada state judge to make the willful and malicious findings as the "predicate acts" triggering the findings and conclusions to quiet title to Appellants' real property; thus, those findings were "legally necessary" to the Quiet Title judgment. Alternatively, Appellants requested that

the bankruptcy court, under its authority set forth in section 105, "allow" the State Court Action to continue in Nevada so it could make a final decision on their case against Geraldine. Finally, as another alternative, Appellants asked the bankruptcy court to determine the nondischargeability action on the papers because Appellants were financially unable to proceed with trial. Geraldine opposed Appellants' multiple motions, contending that they violated numerous local rules. She also requested sanctions and attorneys fees and costs.

At the April 19, 2010 pretrial conference, the bankruptcy court stated that it was not going to consider Appellants' multiple motions because they were filed improperly, they were untimely and, in any event, they had no merit. Due to Appellants' concern over finances, the court also shortened the trial from four days to two because the only issue to be decided was Geraldine's state of mind; retrying any binding facts already determined in the State Court Action was unnecessary. Finally, the court stated that if Appellants were willing to represent that they were definitely not proceeding with trial, then the court would dismiss the adversary proceeding. Appellants' counsel responded that he needed to consult with his clients. The court gave Appellants until April 21, as requested, to file a declaration stating whether or not they intended to proceed with trial. A new trial date was set for May 11 and 12, 2010. On April 22, 2010, Appellants filed two declarations (one from counsel, one from Mr. Hammer), informing the bankruptcy court that due to economic constraints Appellants were not proceeding with trial against Geraldine. Mr. Hammer's declaration explained

that Appellants had already spent $200,000 in litigation expenses against the Van Dammes, and thus they could not afford to travel to Oakland to proceed with trial. Mr. Hammer also attempted to reargue Appellants' case against the Van Dammes.

On April 28, 2010, the bankruptcy court issued an order dismissing Appellants' adversary proceeding against Geraldine, with prejudice, for failure to prosecute. Appellants timely appealed.

II. JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 157(b)(2)(I) and 1334. Geraldine contends that we cannot review the order denying Appellants' Motion for Summary Judgment because it is an interlocutory order. Initially, denial of Appellants' Motion for Summary Judgment and the order denying their Motion to Reconsider the denial of summary judgment would be considered interlocutory orders. But, such orders become final and reviewable on appeal once an adversary proceeding is dismissed. Bonham v. Compton (In re Bonham), 229 F.3d 750, 761 (9th Cir. 2000). However, no order was ever entered denying Appellants' Motion for Summary Judgment as required by Rules 9021 and 7058(a), so no interlocutory order exists. Nonetheless, an order was entered on the Motion to Reconsider, which stated that the bankruptcy court had denied Appellants' Motion for Summary Judgment. That order serves as the necessary order on the summary judgment.

As for the lack of a separate judgment, failure to enter a separate judgment under FRCP 58(a) is not a prerequisite to appeal. Casey v. Albertson's, Inc., 362 F.3d 1254, 1258 (9th

Cir. 2004). Furthermore, Geraldine has not objected to this defect, so she has waived the issue. Accordingly, we have jurisdiction under 28 U.S.C. § 158.

III. ISSUES

1. Did the bankruptcy court err when it denied Appellants' Motion for Summary Judgment?
2. Did the bankruptcy court abuse its discretion when it denied Appellants' Motion to Reconsider?
3. Did the bankruptcy court abuse its discretion when it denied Appellants' alternative requests for relief?
4. Did the bankruptcy court abuse its discretion when it dismissed the adversary proceeding?

IV. STANDARD OF REVIEW

We review summary judgment orders de novo. Tobin v. San Souci Ltd. P'ship (In re Tobin), 258 B.R. 199, 202 (9th Cir. BAP 2001). Viewing the evidence in the light most favorable to the nonmoving party, we must determine "whether there are any genuine issues of material fact and whether the trial court correctly applied relevant substantive law." Id.

We review de novo the preclusive effect of a judgment; whether issue preclusion applies is a mixed question of law and fact in which the legal questions predominate. The Alary Corp. v. Sims (In re Associated Vintage Group, Inc.), 283 B.R. 549, 554 (9th Cir. BAP 2002).

The bankruptcy court's denial of a motion to reconsider is reviewed for an abuse of discretion. Hale v. U.S. Trustee (In re Basham), 208 B.R. 926, 930 (9th Cir. BAP 1997). A bankruptcy court's discretion to retain jurisdiction over a case

in light of a motion to change venue or dismiss for improper venue is also reviewed for an abuse of discretion. In re Bankers Trust, 403 F.2d 16, 23 (7th Cir. 1968). We review dismissal for failure to prosecute under FRCP 41, incorporated by Rule 7041, for an abuse of discretion. Al-Torki v. Kaempen, 78 F.3d 1381, 1384 (9th Cir. 1996).

To determine whether the bankruptcy court abused its discretion, we follow a two-part test. U.S. v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009). First, we determine de novo whether the bankruptcy court identified the correct legal rule to apply to the relief requested. Id. If it did, we next determine whether the bankruptcy court's application of the correct legal standard to the evidence presented was "(1) 'illogical,' (2)'implausible,' or (3) without 'support in inferences that may be drawn from the facts in the record.'" Id. If any of these three apply, we may conclude that the court abused its discretion by making a clearly erroneous finding of fact. Id.

V. DISCUSSION

Appellants appeal the bankruptcy court's denial of their Motion for Summary Judgment, its denial of their Motion to Reconsider, its denial of their alternative requests for relief set forth in the multiple motions filed on April 13, 2010, and its dismissal of the adversary proceeding. We address each issue in turn.

A. The Bankruptcy Court Did Not Err When It Denied Appellants' Motion for Summary Judgment.

1. Substantive Requirements for Summary Judgment.

Summary judgment may be granted if, when the evidence is viewed in a light most favorable to the nonmoving party, no

genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. FRCP 56(e); Far Out Prods., Inc. v. Oskar, 247 F.3d 986, 992 (9th Cir. 2001). An issue is "genuine" if there is sufficient evidence for a reasonable fact finder to find in favor of the nonmoving party, and a fact is "material" if it might affect the outcome of the case. Id.

The initial burden of showing no genuine issue of material fact exists rests on the moving party. Id. A plaintiff seeking summary judgment who fails to produce sufficient evidence on one or more essential elements of a claim is no more entitled to summary judgment than one who fails to offer evidence at trial sufficient to support the elements of a claim as to which that plaintiff bears the burden of proof. Watts v. U.S., 703 F.2d 346, 347 (9th Cir. 1983).

2. The Elements of a § 523(a)(6) Claim.

Plaintiff bears the burden of proving its claim against defendant is excepted from discharge under section 523(a)(6) by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 284 (1991). Section 523(a)(6) excepts from discharge any debt for willful and malicious injury by the debtor to another entity or to the property of another entity.

Whether a particular debt is for willful and malicious injury by the debtor to another or the property of another under section 523(a)(6) requires application of a two-pronged test to the conduct giving rise to the injury. The creditor must prove that the debtor's conduct in causing the injuries was both willful and malicious. Barboza v. New Form, Inc. (In re

Barboza), 545 F.3d 702, 711 (9th Cir. 2008)(supporting the two-prong test set forth in Carrillo v. Su (In re Su), 290 F.3d 1140 (9th Cir. 2002).

Willfulness requires proof that the debtor deliberately or intentionally injured the creditor or the creditor's property, and that in doing so, the debtor intended the consequences of his act, not just the act itself. Su, 290 F.3d at 1143. The debtor must act with a subjective motive to inflict injury, or with a belief that injury is substantially certain to result from the conduct. Id. at 1142.

For conduct to be malicious, the creditor must prove that the debtor: (1) committed a wrongful act; (2) done intentionally; (3) which necessarily caused injury; and (4) was done without just cause or excuse. Id. at 1146-47.

3. Issue Preclusion.

Issue preclusion applies in dischargeability actions. Grogan, 498 U.S. at 284 n.11. Under the full faith and credit statute, federal courts must give state court judgments the preclusive effect that those judgments would enjoy under the law of the state in which the judgment was rendered. Far Out Prods., Inc., 247 F.3d at 993 (citing 28 U.S.C. § 1738).

In order to analyze whether issue preclusion applies, the federal court must look to the law of the state in which the judgment was entered. Molina v. Seror (In re Molina), 228 B.R. 248, 250 (9th Cir. BAP 1998) (citing Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798 (9th Cir. 1995)). In Nevada, issue preclusion requires that (1) an issue be identical, (2) the initial ruling was final and on the merits, (3) the party against

whom the judgment is asserted was a party or in privity with a party in the prior case, and (4) the issue was actually and necessarily litigated. Five Star Capital Corp. v. Ruby, 194 P.3d 709, 713 (Nev. 2008). "The doctrine of collateral estoppel precludes parties from re-litigating issues that were actually decided and necessary to a judgment in an earlier suit on a different claim between the same parties." City of Reno v. Reno Police Protective Ass'n, 59 P.3d 1212, 1216 (Nev. 2002)(emphasis added).

4. Analysis.

The preclusive effect of a prior judgment is a question of law reviewed de novo. Far Out Prods., Inc., 247 F.3d at 993. With respect to the first element, we see nothing in the bankruptcy court's decision determining that issue. Apparently, however, the bankruptcy court thought it decided that element in Appellants' favor since it concluded that Appellants failed only to satisfy the "necessarily determined" portion of the fourth element. In any event, Geraldine does not contest the first element on appeal, and the record is clear that the issue of Geraldine's conduct decided in the State Court Action was the identical issue before the bankruptcy court.

As for the second element, despite Geraldine's argument to the contrary, the bankruptcy court found that PSJ Order 1 and PSJ Order 2 were final rulings on the merits for purposes of issue preclusion. Although not cited by the parties or the bankruptcy court, under Nevada law an issue decided on a summary judgment motion has a preclusive effect for issue preclusion purposes. Bower v. Harrah's Laughlin, Inc., 215 P.3d 709, 720 (Nev. 2009).

No one disputed that the parties were the same, thus satisfying the third element.

Finally, as for the fourth element, the bankruptcy court found that based on PSJ Order 1, which dismissed Van Dammes' counterclaim for Quiet Title and granted Appellants' affirmative claim for same, the issues of willfulness, malice, and resulting injury to Appellants were "actually litigated and determined" in the State Court Action. However, the bankruptcy court disagreed with Appellants that Geraldine's willful and malicious conduct was "necessarily determined" - i.e., that it was necessary to support the judgment against the Van Dammes for their counterclaim of Quiet Title, based on their claim of adverse possession, or that it was necessary to support a judgment in favor of Appellants for their Quiet Title claim. Relying on California quiet title law,[6] which the bankruptcy court predicted the Nevada Supreme Court would follow, it noted that such an action does not include any "intent" element, and thus a party's state of mind is irrelevant for determination of a quiet title claim. The bankruptcy court did not consider PSJ Order 2 in its analysis since that Order simply dismissed the Van Dammes' two other counterclaims and did not determine any of the Appellants' other affirmative claims.

Appellants contend that the bankruptcy court erred when it applied California quiet title law in its application of the

[6] The bankruptcy court relied on California law because Appellants failed to cite any Nevada authority regarding quiet title, and because the court could not locate any relevant Nevada authority on the matter.

fourth element. In addition, they contend that the bankruptcy court erred by construing the element of "necessarily determined" too narrowly; it focused on the "label" of quiet title rather than considering that the Nevada state court found Geraldine's conduct was willful and malicious in the context of the entire case. In other words, Appellants contend that the bankruptcy court failed to take into account their causes of action for Slander of Title and Trespass, both of which are intentional torts in Nevada; quieting title was merely the remedy for their other claims.[7]

Without a doubt, Geraldine's willful and malicious conduct was "actually litigated" in the State Court Action, thereby satisfying the first prong of the fourth element. As for the "necessarily determined" prong of that element, we agree with Appellants that the bankruptcy court erred in applying California quiet title law in its analysis. Clearly, Nevada law should have been applied. However, we do not fault the bankruptcy court for applying California law considering that Appellants failed to cite any relevant Nevada authority on the matter, and they still have not done so on appeal. In any event, the bankruptcy court's error here was harmless because, even when applying Nevada law, we reach the same conclusion.

In Nevada, an action to quiet title to real property is permitted pursuant to Nev. Rev. Stat. § 40.010. Such an action

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[7] PSJ Order 1, which set forth the Nevada state court's findings and conclusions on Geraldine's willful and malicious conduct, was drafted by Appellants' counsel and adopted wholesale by the state court. Such situations require review with special scrutiny. Silver v. Exec. Car Leasing Long-Term Disability, 466 F.3d 727, 733 (9th Cir. 2006).

requests a judicial determination of all adverse claims to disputed property. Del Webb Conservation Holding Corp. v. Tolman, 44 F.Supp.2d 1105, 1109-10 (D. Nev. 1999); see also Nev. Rev. Stat. § 40.090. Nevada law on quiet title, both statutory and case law, is silent on any scienter element. Therefore, "intent" is not required.

As the Nevada state court stated in PSJ Order 1, all it necessarily had to decide is whether the Van Dammes established the elements of adverse possession in order to prevail on their counterclaim for Quiet Title. They failed to do so. While PSJ Order 1 concluded that the Van Dammes' conduct was willful and malicious, such a determination was not "necessary" to support the judgment on the Quiet Title action as a plaintiff in Nevada need not show "intent" in order to prevail.

We understand Appellants' well-reasoned argument, but even if PSJ Order 1 and PSJ Order 2 determined certain facts as law of the case, neither Order awarded a judgment for Appellants' other affirmative claims of Slander of Title, Trespass, or Battery. We cannot simply "infer" an intent element for quiet title as Appellants suggest. Furthermore, we can certainly think of circumstances where willful and malicious conduct would not be predicate behavior in order for a party to prevail on a claim for quiet title. Acts of pure negligence would seem to suffice.[8]

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[8] Appellants cite Summa Corp. v. Greenspun, 98 Nev. 528, 655 P.2d 513 (Nev. 1982), for the proposition that obtaining relief for quiet title necessarily implies that some other "act" occurred such as, in this case, the tort of trespass or slander of title. Thus, Appellants argue, in PSJ Order 1 the Nevada state court was obligated to, and necessarily did determine,

(continued...)

Accordingly, without satisfying "necessarily determined" for purposes of Nevada issue preclusion law, Appellants were not entitled to summary judgment, and the bankruptcy court did not err in denying it.

B. The Bankruptcy Court Did Not Abuse Its Discretion When It Denied Appellants' Motion To Reconsider.

The Bankruptcy Code does not contemplate motions for reconsideration, rather, such motions are treated as motions to alter or amend judgment under FRCP 59(e), made applicable by Rule 9023. Hanson v. Finn (In re Curry and Sorensen, Inc.), 57 B.R. 824, 826-27 (9th Cir. BAP 1986).

Appellants' Motion to Reconsider was not a proper motion under Rule 9023 because no order or judgment had yet been entered when they filed it. It was premature. Nonetheless, the bankruptcy court treated it as a timely Rule 9023 motion and proceeded to address its merits.

Reconsideration is appropriate only if one of the following three grounds are present: (1) manifest error of fact,

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[8](...continued)
Geraldine's acts were willful and malicious in order to reach the conclusion that Appellants were entitled to relief on their action for Quiet Title.

Although Summa Corp. focused primarily on the issue of attorneys fees and whether they are allowed as special damages, we do not disagree that some predicate "act" has to occur in order for a plaintiff to allege a cause of action for quiet title in Nevada. However, as we stated above, Nevada quiet title law does not require the element of "intent," and a defendant's non-tortious conduct could entitle a plaintiff to relief. Even though in PSJ Order 1 the Nevada state court found Geraldine's conduct to be willful and malicious, it granted Appellants quiet title because Van Dammes failed to prove their case for adverse possession, not because Appellants proved their case for Slander of Title, Trespass, or Battery. Thus, Geraldine's conduct was not "necessary" to support a judgment in favor of Appellants, and therefore they cannot establish a case for issue preclusion under Nevada law.

(2) manifest error of law, or (3) newly discovered evidence. Basham, 208 B.R. at 934. A motion for reconsideration is not permitted to rehash the same arguments made the first time or to simply express an opinion that the court was wrong. In re Greco, 113 B.R. 658 (D. Haw. 1990), aff'd and remanded, 952 F.2d 406 (9th Cir. 1991).

The record indicates that Appellants' Motion to Reconsider merely restated the same arguments that were previously raised and rejected by the bankruptcy court. Appellants also did not set forth any newly discovered evidence or establish the existence of a manifest error of fact or law. While we agree that the bankruptcy court erred in applying California quiet title law, such error was harmless because, even when applying Nevada law, Geraldine's willful and malicious conduct was not necessary to the Nevada state court's judgment on the Quiet Title action.

Despite Appellants' unsupported argument to the contrary, the bankruptcy court was not required to conduct a hearing nor was Geraldine required to file an opposition before the court could consider their Motion to Reconsider. We also reject Appellants' argument that the bankruptcy court did not properly "review" the motion. The court did review it and addressed its merits. Appellants confuse review with reviewed and rejected.

Accordingly, the bankruptcy court did not abuse its discretion in denying Appellants' Motion to Reconsider.

C. The Bankruptcy Court Did Not Abuse Its Discretion When It Denied Appellants' Alternative Requests For Relief.[9]

In Appellants' pretrial statement filed on April 13, 2010, rather than discussing the facts and law at issue for trial, they used the opportunity to improperly file one motion/memorandum moving for several different alternative forms of relief. The bankruptcy court stated at the April 19 pretrial conference that it would not consider the multiple motions because they were procedurally improper, untimely, and lacked any merit nonetheless.

The bankruptcy court did not abuse its discretion here for several reasons. First, it was free to disregard the multiple motions because they violated several local rules of procedure. Under BLR 7007-1, Motions in Adversary Proceedings, all motions (minus a few exceptions that do not apply here) are to be filed and served at least 28 days before the hearing date. Since Appellants failed to set any hearing date for the multiple motions, they presumably wanted them heard at the pretrial conference, which was in six days. This procedure was improper. Further, Appellants failed to file any notice and they lumped all of their motions into one. This procedure violated BLR 7001-1 as

[9] The bankruptcy court orally denied Appellants' motion for alternative requests for relief at the April 19, 2010 pretrial conference, but no order was ever entered. Nothing in the Northern District of California's local bankruptcy rules ("BLR") indicates that the order dismissing the adversary proceeding would serve as an order for Appellants' motion. As a result, we may not have jurisdiction over this matter as it is still "pending." The parties did not address this issue on appeal. To the extent we have jurisdiction, we address Appellants' arguments.

well as BLR 9013-1.[10] Accordingly, under BLR 9011-1, which provides that failure to comply with any provision of the local rules shall be grounds for appropriate sanctions, the bankruptcy court was well within its discretion to disregard the improper multiple motions.

However, the bankruptcy court did not entirely disregard the multiple motions as Appellants contend. It reviewed them, albeit cursorily, and determined that they lacked merit. We now review each motion in turn.

Appellants first argue that the bankruptcy court abused its discretion when it refused to reconsider its order denying their Motion to Reconsider the denial of their Motion for Summary Judgment because trial courts have discretion to entertain successive motions for summary judgment. The bankruptcy court did not say that it would not consider Appellants' request because it was precluded from doing so. Further, the key word

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[10] BLR 9013-1 provides: Motion Papers.

(a) Matters Covered by Rule. This rule shall apply to initial papers, response papers, and reply papers in any case or adversary proceeding.

(b) Form. Initial papers shall include the following separate documents:

(1) The first document, Notice of Hearing, shall state the date, time, and location of hearing (if any);

(2) The second document, the Motion, shall provide a concise statement of what relief or Court action the movant seeks; and

(3) The third document, the memorandum of points and authorities, shall provide a statement of the issues to be decided, a succinct statement of the relevant facts, and argument of the party, citing supporting authorities.

here is "discretion." Appellants' reconsideration request merely rehashes the same arguments asserted in their prior Motion to Reconsider. Therefore, regardless of why the bankruptcy court decided not to reconsider its order it already reconsidered, the motion had no merit, and thus the bankruptcy court did not abuse its discretion in rejecting it.

Next, Appellants argue that the bankruptcy court abused its discretion when it refused to "return the adversary proceeding" to the Nevada state court, or abused its discretion when it refused to "stay" the adversary proceeding so the State Court Action could continue in Nevada. In reviewing the record, the "adversary proceeding" was never removed from the Nevada state court to the bankruptcy court; it was an entirely new action filed by Appellants in the bankruptcy court. If Appellants mean that the bankruptcy court refused to return the State Court Action to Nevada, Appellants never "removed" the State Court Action to the bankruptcy court, so we are unclear as to how the bankruptcy court could "return" it. As for the bankruptcy court not "staying" the adversary proceeding and "allowing" the State Court Action to resume in Nevada, which would have consisted only of cross examination of Geraldine, we see nothing in the record indicating that Appellants ever filed a motion for relief from the automatic stay for the bankruptcy court to act upon. Interestingly, they did file such a motion before the bankruptcy court against Armin in his case, which the bankruptcy court granted, and the State Court Action proceeded as to Armin. We see no abuse here.

Finally, Appellants argue that the bankruptcy court abused

its discretion in not dismissing or transferring Geraldine's bankruptcy case to the "Southern" District of Nevada for improper venue. They contend that Geraldine failed to establish residency or domicile in the Northern District of California at the time she filed her bankruptcy petition as required by 28 U.S.C. § 1408. Under Rule 1014(a)(2), if the petition is filed in an improper district, the court, on the timely motion of a party in interest, or its own motion, may dismiss the case, or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties. The key words in Rule 1014(a)(2) are "timely motion." Appellants failed to assert any reasons in their "venue" motion as to why it was timely. Geraldine filed bankruptcy on December 16, 2008; Appellants filed their motion on April 13, 2010 - almost one and one-half years later. Therefore, the motion could not be considered timely. See In re Jones, 39 B.R. 1019, 1020 (Bankr. S.D. N.Y. 1984)(motion to change venue one and one-half years after case commenced denied as untimely; transfer would result in duplication of administrative expenses and delay). Furthermore, by their own admission, the alleged facts about Geraldine's residency were known to them within six days after she filed bankruptcy, which was almost three months before they filed their adversary complaint in March 2009. Yet, in their adversary complaint, Appellants asserted that venue in the Northern District of California was proper. Again, we see no abuse of discretion by the bankruptcy court.

Nothing in the bankruptcy court's decision to deny Appellants' alternative requests for relief can be considered

"illogical," "implausible," or without "support in inferences that may be drawn from the facts in the record.'" Accordingly, it did not abuse its discretion. Hinkson, 585 F.3d at 1262.

D. The Bankruptcy Court Did Not Abuse Its Discretion When It Dismissed The Adversary Proceeding.

The bankruptcy court did not articulate under which rule it was dismissing the adversary proceeding, so we presume it did so under FRCP 41, which is incorporated into Rule 7041.

Generally, before dismissing a case for lack of prosecution, the trial court is required to weigh several factors. Moneymaker v. CoBen (In re Eisen), 31 F.3d 1447, 1451 (9th Cir. 1994).[11] Here, however, the record demonstrates that Appellants willingly, albeit begrudgingly, dropped their case. They informed the bankruptcy court by way of declarations that they were unable to proceed with trial due to financial constraints. Further, the bankruptcy court told Appellants at least twice at the April 19 pretrial conference that it would dismiss the case with prejudice if Appellants were unable to proceed. Under such circumstances, we fail to see how the bankruptcy court abused its discretion.

VI. CONCLUSION

For the foregoing reasons, we AFFIRM.

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[11] In Eisen, the Ninth Circuit held that the trial court should consider the following five factors before dismissing a case for lack of prosecution: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions.

Appellants fail to address any of the Eisen factors or present any argument on this issue, but focus more on how the bankruptcy court abused it discretion by not granting their alternative requests for relief.