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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NOT FOR PUBLICATION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-11-1143-DHPa  
 GRACE M. CENICEROS, )  
 Debtor. )  
 \_\_\_\_\_ )  
 GRACE M. CENICEROS, )  
 Appellant, )  
 v. ) **M E M O R A N D U M**<sup>1</sup>  
 SUZY YAQUB; JESSICA WALTER, )  
 Appellees. )  
 \_\_\_\_\_ )

Argued and Submitted on May 17, 2012  
at Pasadena, California

Filed - June 5, 2012

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

Honorable Theodor C. Albert, Bankruptcy Judge, Presiding

Appearances: David Brian Lally, Esq. argued for Appellant Grace  
M. Cenicerros; Appellees Suzy Yaqub and Jessica  
Walter did not appear at argument.

Before: DUNN, HOLLOWELL and PAPPAS, Bankruptcy Judges.

<sup>1</sup> 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 The appellees, Suzy Yaqub and Jessica Walter (collectively,  
2 "appellees"), are former employees of the debtor, Grace M.  
3 Cenicerros.<sup>2</sup> Prepetition, the appellees initiated a lawsuit  
4 against the debtor and her corporation, Cenicerros Residential,  
5 Inc. ("CRI"), asserting various employee rights claims.<sup>3</sup> Before  
6 the appellees could proceed further in their lawsuit, the debtor  
7 filed her individual chapter 7 bankruptcy petition on May 12,  
8 2010.

9 The appellees moved to dismiss the debtor's chapter 7 case  
10 under § 707(b)(1) ("motion to dismiss"), which the debtor opposed.  
11 The bankruptcy court granted the motion to dismiss at the  
12 hearing.<sup>4</sup>

13 \_\_\_\_\_  
14 <sup>2</sup> Unless otherwise indicated, all chapter, section and rule  
15 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
16 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.  
17 The Federal Rules of Civil Procedure are referred to as "Civil  
18 Rules." The Rules of the United States Bankruptcy Appellate  
19 Panel of the Ninth Circuit are referred to as "BAP Rules."

20 <sup>3</sup> The appellees claimed that the debtor and CRI violated  
21 California labor laws by failing to pay them minimum wage and  
22 overtime. The appellees included copies of pleadings from the  
23 lawsuit in a relief from stay motion filed in CRI's chapter 7  
24 bankruptcy case (main case docket no. 13). Neither the appellees  
25 nor the debtor provided these documents in the record on appeal.  
26 We obtained a copy of the relief from stay motion and its  
27 attachments from the bankruptcy court's electronic docket. See  
28 O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d  
955, 957-58 (9th Cir. 1988); Atwood v. Chase Manhattan Mortg. Co.  
(In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

<sup>4</sup> Although it granted the motion to dismiss at the hearing,  
the bankruptcy court did not enter an order dismissing the  
debtor's chapter 7 bankruptcy case. On November 21, 2011, we  
issued an order requiring the debtor to provide a copy of the  
dismissal order.

(continued...)

1 Before the bankruptcy court entered an order dismissing her  
2 chapter 7 case, the debtor filed a motion for reconsideration  
3 ("reconsideration motion"). The bankruptcy court denied the  
4 reconsideration motion. The debtor appeals both decisions. We  
5 AFFIRM.

6  
7 **FACTS**

8 To point out that the schedules filed by the debtor in her  
9 personal chapter 7 bankruptcy case are somewhat confusing is an  
10 understatement. Among the assets scheduled by the debtor in her  
11 chapter 7 case, she included four parcels of real property, all  
12 located in Westminster, California ("Westminster properties").  
13 She also scheduled a 100% interest in CRI, a California  
14 corporation that operated health care facilities for disabled  
15 adults.<sup>5</sup> The debtor was the president and sole shareholder of  
16 CRI. CRI leased from the debtor the Westminster properties from  
17

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18 <sup>4</sup>(...continued)

19 The debtor filed a response to our order, contending that  
20 the bankruptcy court's order denying the reconsideration motion  
21 ("reconsideration order") should be construed as an order  
22 dismissing her chapter 7 case. We informed the debtor that  
23 neither the title nor the text of the reconsideration order  
24 contained language dismissing her chapter 7 case. We then issued  
25 an order of limited remand ("remand order") to the bankruptcy  
26 court to allow it to enter an order specifically dismissing the  
27 debtor's chapter 7 bankruptcy case. The bankruptcy court entered  
28 an order dismissing the debtor's chapter 7 case on February 10,  
2012 ("dismissal order").

<sup>5</sup> CRI filed its own chapter 7 petition on June 7, 2010  
(10-17718). CRI's chapter 7 case was dismissed and closed on  
October 25, 2010, one week after its chapter 7 trustee filed a no  
asset report.

1 which it operated its health care business. In her statement of  
2 intention, the debtor proposed to retain and make payments on all  
3 of the Westminster properties.

4 The debtor reported in her original Schedule F that she had  
5 a total of \$636,830 in unsecured nonpriority debt. She later  
6 stated in her amended Schedule F that she had a total of \$661,674  
7 in unsecured nonpriority debt. The debtor initially reported the  
8 value of her interest in CRI ("CRI interest") at \$16,000 in her  
9 original Schedule B, but changed it to \$0 in her amended  
10 Schedule B. She indicated that the \$0 value of the CRI interest  
11 was a "postpetition valuation." The debtor explained that the  
12 change in the CRI interest's value "result[ed] from [the]  
13 termination of CRI's health care operating license, [her]  
14 termination of business operations, and the transfer of patients  
15 to [] Unique Care, a different licensee [and another health care  
16 facility operator]."

17 The debtor stated in her original Schedule I that she was  
18 self-employed, naming CRI as her place of business. She later  
19 reported in her amended Schedule I that she was unemployed as of  
20 June 9, 2010. The debtor explained that she had terminated CRI's  
21 operations at the Westminster properties when the Department of  
22 Social Services ("DSS") revoked CRI's operating license. CRI's  
23 patients were transferred to Unique Care, which apparently was a  
24 new entity run by her son-in-law, Joseph Nassif.

25 The debtor explained that she was temporarily leasing the  
26 Westminster properties to Unique Care on a month-to-month basis  
27 ("leasing arrangement"). She made the leasing arrangement with  
28 Unique Care to "enable uninterrupted continuation of [the

1 Westminster properties] mortgage payments and auto payments<sup>6</sup>  
2 until such time as [Unique Care] could obtain legal ownership of  
3 the [health care] facilities."

4 The debtor reported in her original and amended Schedule I a  
5 total monthly income of \$15,578. Her total monthly income  
6 consisted of \$2,722 net monthly take home pay, \$66 monthly  
7 pension/retirement income and \$12,790 monthly regular income from  
8 the operation of CRI. She reported \$0 in estimated net monthly  
9 income in her amended business income and expenses statement  
10 ("amended business statement"), based on \$13,700 in estimated  
11 future gross monthly income and \$13,700 in rent for estimated  
12 future monthly expenses.<sup>7</sup> The debtor explained that she would  
13 have no income from the leases with Unique Care as they were "at  
14 cost," and Unique Care would directly pay the auto lease and the  
15 mortgages on the Westminster properties.<sup>8</sup> According to the  
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17 <sup>6</sup> The debtor reported making auto payments, but it was  
18 unclear whether she and/or CRI owned the 2008 Lincoln Navigator,  
19 the only vehicle they each listed in their respective bankruptcy  
20 documents. The debtor listed the 2008 Lincoln Navigator in her  
21 Schedule D and original and amended Schedule B. She also listed  
22 it under Subpart C: Deductions for Debt Payment, line 42(f) of  
23 her amended B22A form; she reported a \$798.93 monthly payment to  
24 Ford Motor Credit Corporation for the vehicle.

25 CRI listed in its amended Schedule B the 2008 Lincoln  
26 Navigator (presumably the same as the one listed by the debtor).  
27 CRI listed monthly payments of \$2,817 for "auto installment  
28 loans" in its business income and expenses statement.

<sup>7</sup> The debtor calculated the mortgage payments for the  
Westminster properties at \$10,883, and auto lease payments at  
\$2,817.

<sup>8</sup> The debtor provided this explanation in a declaration  
(continued...)

1 debtor, the rental income she received would be "offset" by the  
2 auto lease payments and the mortgage payments on the Westminster  
3 properties.

4 In her original B22A form, the debtor reported \$16,939 in  
5 current monthly income, which included \$4,083 in gross wages and  
6 \$12,790 in business income. In her amended B22A form, she  
7 reported \$15,930 in current monthly income; she reduced her  
8 monthly gross wages to \$2,333 and increased her monthly business  
9 income to \$13,531. She reported in both the original and amended  
10 B22A forms current monthly expenses of \$17,853.73.

11 Before the § 341(a) meeting was concluded, the appellees  
12 filed the motion to dismiss.<sup>9</sup> They contended that the debtor's  
13 chapter 7 case was presumptively abusive under § 707(b)(2)(A)(I)  
14 because she had sufficient income from renting the Westminster  
15 properties to pay her debts in full. The debtor failed to  
16 include rental income in her B22A form. Had she done so, the  
17 appellees argued, the debtor would have between \$23,183 and  
18 \$28,939 monthly income. Taking \$17,853.73 in monthly expenses  
19 into account, the debtor would have between \$5,329.27 and  
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21 <sup>8</sup>(...continued)  
22 attached to her amended business statement. She attached several  
23 documents to the amended business statement, including the  
24 declaration. The debtor did not provide a complete copy of the  
25 amended business statement in the record on appeal. We obtained  
26 a complete copy of the amended business statement from the  
27 bankruptcy court's electronic docket. See Atwood, 293 B.R. at  
28 233 n.9.

<sup>9</sup> The chapter 7 trustee held the initial § 341(a) meeting on  
June 23, 2010, but continued it to July 12, 2010. He concluded  
the § 341(a) meeting on August 10, 2010.

1 \$11,085.27 in monthly disposable income.

2 The appellees also argued that the debtor filed her  
3 chapter 7 petition in bad faith under § 707(b)(3)(A) because:  
4 (1) she failed to disclose the rental income from the Westminster  
5 properties in her B22A form; (2) she failed to disclose the fact  
6 that CRI operated health care facilities as required under  
7 Rule 2007.2; and (3) she made false and/or misleading statements  
8 regarding the termination of the operations of the health care  
9 business and the alleged sale of the health care facilities.

10 With respect to the third contention in particular, the  
11 appellees claimed that the debtor had not terminated operations  
12 at the health care facilities but continued to operate them and  
13 that she still was licensed to do so. They attached as an  
14 exhibit a copy of a printout of the health care facility vendor  
15 list provided by the Regional Center of Orange County ("RCOC");  
16 the vendor list included CRI's health care facilities.

17 With respect to the sale of the health care facilities, the  
18 appellees argued that, contrary to her claim that she intended to  
19 liquidate the health care facilities by selling them to Nassif,  
20 the debtor intended to continue to operate the health care  
21 facilities.

22 The appellees alternatively contended that the totality of  
23 the circumstances under § 707(b)(3)(B), as demonstrated by the  
24 debtor's omissions and false and/or misleading statements,  
25 warranted dismissal of her chapter 7 case.

26 The debtor opposed the motion to dismiss. She claimed that  
27 the appellees made baseless allegations, failing to provide  
28 evidence to support them. The debtor also argued that, contrary

1 to the appellees' assertions, she did not intentionally omit  
2 information from her bankruptcy documents.

3 With respect to the alleged omission of the rental income,  
4 the debtor contended that her tax accountant classified certain  
5 transactions as rental income and expenses for tax reporting  
6 purposes, but there was "no double-counting of rent expense, no  
7 additional rent income and no net profit or loss from such  
8 treatment." Because of these classifications, the debtor  
9 "excluded them for financial presentation purposes in Schedule I  
10 and form B22A." She claimed that she properly calculated her  
11 income in the B22A form because the rental income was for "tax  
12 reporting purposes only."

13 The debtor asserted that she disclosed to the chapter 7  
14 trustee at the § 341(a) meeting that CRI operated health care  
15 facilities. As to the proposed sale of the health care  
16 facilities to Nassif, the debtor asserted that she had not sold  
17 them and would not sell them without the chapter 7 trustee's  
18 consent. She further contended that she was not operating the  
19 health care facilities, as her operating license had been  
20 revoked. She claimed that the RCOC list had not been updated to  
21 reflect this.

22 The bankruptcy court held a preliminary hearing on August 3,  
23 2010, on the motion to dismiss ("preliminary hearing"). It set  
24 over the hearing to December 16, 2010 ("dismissal hearing").  
25 Shortly after the preliminary hearing, the chapter 7 trustee  
26 filed a no asset report on August 11, 2010.

27 The debtor appeared at the dismissal hearing. Her attorney  
28 at the time, Shahnaz Hussain, did not appear, however. Hussain



1 believed that he did not have to appear on the debtor's behalf,  
2 based on a discussion with the debtor's former attorney, Douglas  
3 G. Miller.

4       According to Hussain, Miller had told him that the motion to  
5 dismiss "should go away because [the debtor] didn't have any  
6 monies to pay her creditors and the [chapter 7] case was very  
7 likely going to be discharged by [the chapter 7 trustee]."  
8 Miller further told him that once the chapter 7 trustee  
9 discharged the debtor's chapter 7 case, the appellees would "have  
10 [no] case against [the debtor]" and that the dismissal hearing  
11 "would have no bearing on [the debtor's] bankruptcy case."  
12 Hussain also believed that the bankruptcy court would review the  
13 debtor's "entire file and determine that [the] motion to dismiss  
14 was frivolous" and "would see through [the appellees'] lies and  
15 deny [their] frivolous motion to dismiss." Hussain further  
16 explained that he did not appear at the dismissal hearing because  
17 he wanted "to save money for the [debtor]."

18       The bankruptcy court granted the motion to dismiss at the  
19 dismissal hearing.<sup>10</sup> Before the bankruptcy court entered the  
20 dismissal order, the debtor moved for reconsideration of the  
21 dismissal order under Civil Rule 60(b), applicable through  
22 Rule 9024.

23       The debtor argued in her reconsideration motion that the  
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25  
26       <sup>10</sup> The bankruptcy court apparently issued a tentative ruling  
27 before the dismissal hearing. Neither the debtor nor the  
28 appellees provided a copy of the tentative ruling in the record  
on appeal, and it is not available on the bankruptcy court's  
docket.

1 appellees' motion to dismiss lacked merit as they provided no  
2 evidence to support their contentions in the motion to dismiss.  
3 She further contended that the appellees should have withdrawn  
4 the motion to dismiss when the chapter 7 trustee filed the no  
5 asset report. The debtor argued that the pending chapter 7  
6 discharge, heralded by the chapter 7 trustee's no asset report,  
7 rendered the motion to dismiss nugatory.<sup>11</sup>

8 The bankruptcy court issued a tentative ruling before the  
9 February 8, 2011 hearing on the debtor's reconsideration motion  
10 ("reconsideration hearing"). The bankruptcy court determined  
11 that none of the grounds for granting reconsideration were  
12 present. It first found that the debtor did not contend that an  
13 intervening change in law occurred.

14 The bankruptcy court next determined that the debtor did not  
15 present any newly discovered evidence, particularly in regard to  
16 her rental income. While the motion to dismiss was pending, the  
17 bankruptcy court expressed concern as to the amounts reported on  
18 her income taxes as rental income. Before the dismissal hearing,  
19 the debtor provided a letter from her tax accountant regarding  
20 her rental income. The tax accountant explained in the letter  
21

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22 <sup>11</sup> The debtor also claimed that Walter, one of the  
23 appellees, was not a credible witness because she had been  
24 prohibited by the DSS from working at one of CRI's health care  
25 facilities.

26 The debtor attached a copy of a complaint against Walter,  
27 which alleged that Walter had taken a client away from one of  
28 CRI's health care facilities and smoked marijuana with that  
client. The debtor did not include any documents in the record  
indicating that a determination had been reached on the complaint  
against Walter.

1 that the debtor did not have any additional rental income and  
2 that CRI was not "double-expensing it," as CRI was disbursing the  
3 mortgage payments and applying them against the rent it owed to  
4 the debtor. The bankruptcy court noted in its tentative ruling  
5 on the motion to dismiss that "Schedule I show[ed] \$12,790  
6 monthly income against \$13,700 in 'rent' expenses. This [did]  
7 not make a lot of sense if the debtor [owned] the properties."  
8 The tax accountant's letter "[gave] little detail and no real  
9 explanation."

10 The debtor included in the reconsideration motion the tax  
11 accountant's letter, along with her own declaration. The  
12 bankruptcy court found that the debtor's declaration offered  
13 little additional information; it merely restated her tax  
14 accountant's explanation of the rental income. Although the  
15 debtor provided more information in her declaration as to the  
16 revocation of her operating license and her leasing arrangement  
17 with Unique Care, the bankruptcy court found that this  
18 information did not constitute newly discovered evidence, as the  
19 debtor could have presented it at the dismissal hearing. The  
20 bankruptcy court moreover concluded that the information was not  
21 relevant to the primary issues. The bankruptcy court also found  
22 that the complaint against Walter did not constitute newly  
23 discovered evidence, given that the incident occurred in October  
24 2009 and the complaint was dated December 10, 2010.

25 The bankruptcy court lastly determined that the debtor  
26 failed to show that it committed clear error in granting the  
27 motion to dismiss. It noted that the motion to dismiss "was  
28 properly before the [bankruptcy] court and was pending long

1 before [the chapter 7] Trustee's No Asset Report was  
2 filed. . . ."

3       The bankruptcy court determined that the appellees had no  
4 obligation to withdraw the motion to dismiss simply because the  
5 chapter 7 trustee had filed the no asset report. It pointed out  
6 that the debtor and her attorney, Hussain, had a "basic  
7 misunderstanding of the bankruptcy process" in believing that the  
8 chapter 7 trustee discharged the debtor when he filed the no  
9 asset report. The bankruptcy court explained that the chapter 7  
10 trustee did not "'discharge' anything"; rather, "the discharge  
11 [was] granted by law to eligible debtors unless an adversary  
12 proceeding objecting to the discharge or seeking a  
13 dischargeability determination [was] timely filed." The  
14 bankruptcy court further explained that the chapter 7 trustee's  
15 no asset report merely disclosed his determination that no assets  
16 existed that could be efficiently liquidated to provide dividends  
17 for unsecured creditors. The filing of a no asset report by the  
18 chapter 7 trustee did not mean that the debtor was "home free" or  
19 "[could] ignore motions to dismiss, which [could] be based on  
20 other issues such as failure to adequately report or explain her  
21 affairs."

22       Having determined that the debtor failed to establish  
23 grounds for reconsideration, the bankruptcy court denied the  
24 reconsideration motion. It entered the reconsideration order one  
25 week following the hearing on the reconsideration motion.

26       The debtor timely appealed.

27 ///

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1  
2 **JURISDICTION**

3 The bankruptcy court had jurisdiction under 28 U.S.C.  
4 §§ 1334 and 157(b)(1) and (b)(2)(O). We have jurisdiction under  
5 28 U.S.C. § 158.

6 **ISSUES**

7 (1) Did the bankruptcy court abuse its discretion in  
8 dismissing the debtor’s chapter 7 case?

9 (2) Did the bankruptcy court abuse its direction in denying  
10 the debtor’s reconsideration motion?  
11

12 **STANDARDS OF REVIEW**

13 “We have discretion to summarily affirm the bankruptcy  
14 court’s rulings when an appellant fails to provide us with the  
15 relevant transcript.” Clinton v. Deutsche Bank Nat’l Trust Co.  
16 (In re Clinton), 449 B.R. 79, 82 (9th Cir. BAP 2011)(citing  
17 Morrissey v. Stuteville (In re Morrissey), 349 F.3d 1187, 1190-91  
18 (9th Cir. 2003)).

19 We review the bankruptcy court’s legal conclusions de novo  
20 and its factual findings for clear error. Price v. U.S. Trustee  
21 (In re Price), 353 F.3d 1135, 1138 (9th Cir. 2004).

22 We review the bankruptcy court’s order dismissing the case  
23 for abuse of discretion. Id. We conduct the same review for its  
24 order denying a motion for reconsideration, whether the motion  
25 for reconsideration is based on Civil Rule 59(e) or Civil  
26 Rule 60(b). School District No. 1J v. AC&S, Inc., 5 F.3d 1255,  
27 1262 (9th Cir. 1993). We also conduct the same review for the  
28 bankruptcy court’s evidentiary rulings. Johnson v. Neilson

1 (In re Slatkin), 525 F.3d 805, 811 (9th Cir. 2008).

2 We apply a two-part test to determine objectively whether  
3 the bankruptcy court abused its discretion. United States v.  
4 Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009)(en banc). First,  
5 we "determine de novo whether the bankruptcy court identified the  
6 correct legal rule to apply to the relief requested." Id.  
7 Second, we examine the bankruptcy court's factual findings under  
8 the clearly erroneous standard. Id. at 1262 & n.20. We must  
9 affirm the bankruptcy court's factual findings unless those  
10 findings are "(1) 'illogical,' (2) 'implausible,' or (3) without  
11 'support in inferences that may be drawn from the facts in the  
12 record.'" Id.

13 We may affirm on any ground supported by the record. Shanks  
14 v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

## 16 DISCUSSION

17 The debtor appeals both the dismissal order and the  
18 reconsideration order. We address the appeal of each order in  
19 turn.

### 21 A. Dismissal order

22 The bankruptcy court did not issue written factual findings  
23 and legal conclusions when it granted the motion to dismiss. It  
24 issued a tentative ruling, which, we presume, it adopted at the  
25 dismissal hearing.<sup>12</sup> We also presume that the bankruptcy court

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27 <sup>12</sup> We know that the bankruptcy court issued a tentative  
28 ruling on the motion to dismiss because it quoted a portion of  
(continued...)

1 orally announced its factual findings and legal conclusions at  
2 the hearing, as required under Civil Rule 52(a), which applies in  
3 contested matters by way of Rules 1017(f), 9014 and 7052. See  
4 Khachikyan v. Hahn (In re Khachikyan), 335 B.R. 121, 125-26 (9th  
5 Cir. BAP 2005)(motions to dismiss under § 707(b)). See also  
6 McCarthy v. Prince (In re McCarthy), 230 B.R. 414, 417 (9th Cir.  
7 BAP 1999)(motions to remand). We make these assumptions because  
8 the debtor did not include in the record on appeal a transcript  
9 of the dismissal hearing or a copy of the tentative ruling on the  
10 motion to dismiss.

11 Rule 8006 requires an appellant to include any opinion,  
12 findings of fact and conclusions of law of the court and any  
13 transcript that will be needed in the record on appeal.  
14 McCarthy, 230 B.R. at 417. "These items are mandatory, not  
15 optional." Id. Whenever the bankruptcy court orally issues  
16 factual findings and legal conclusions on the record, "it is  
17 mandatory that an appellant designate the transcript under  
18 Rule 8006 [as] [t]here is no other way for an appellate court to  
19 be able to fathom the trial court's action." Id.  
20 Rule 8009(b)(5) imposes the same requirement.<sup>13</sup> Id. See also

21  
22  
23 <sup>12</sup>(...continued)  
24 the tentative ruling on the motion to dismiss in its tentative  
ruling on the reconsideration motion.

25 <sup>13</sup> Rule 8009(b)(5) provides: "If the appeal is to a  
26 bankruptcy appellate panel, the appellant shall serve and file  
27 with the appellant's brief excerpts of the record as an appendix,  
28 which shall include . . . [t]he opinion, findings of fact, or  
conclusions of law filed or delivered orally by the court and  
citations of the opinion if published."

1 Rule 8009(b)(9).<sup>14</sup>

2 As appellant, the debtor has the responsibility to provide  
3 an adequate record on appeal. Kritt v. Kritt (In re Kritt),  
4 190 B.R. 382, 387 (9th Cir. BAP 1995). Her record on appeal  
5 omits the bankruptcy court's factual findings and legal  
6 conclusions, which renders the record incomplete as a matter of  
7 law. See McCarthy, 230 B.R. at 417.

8 The debtor's failure to provide the transcript of the  
9 dismissal hearing allows us to dismiss her appeal of the  
10 dismissal order. See Syncom Capital Corp. v. Wade, 924 F.2d 167,  
11 169 (9th Cir. 1991). Alternatively, we are entitled to affirm  
12 summarily the bankruptcy court's decision. See Kyle v. Dye (In  
13 re Kyle), 317 B.R. 390, 393 (9th Cir. BAP 2004), aff'd, 170 Fed.  
14 Appx. 457 (9th Cir. 2006) ("The settled rule on transcripts in  
15 particular is that failure to provide a sufficient transcript  
16 may, but need not, result in dismissal or summary affirmance and  
17 that the appellate court has discretion to disregard the defect  
18 and decide the appeal on the merits.")(citations omitted).

19 The dismissal order provides little insight as to the legal  
20 and/or factual grounds on which the bankruptcy court dismissed  
21 the debtor's chapter 7 case. There are facts in the record  
22 before us that seem to provide sufficient grounds for dismissal  
23 under § 707(b)(1), but we cannot discern which of these the

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24  
25 <sup>14</sup> Rule 8009(b)(9) provides: "If the appeal is to a  
26 bankruptcy appellate panel, the appellant shall serve and file  
27 with the appellant's brief excerpts of the record as an appendix,  
28 which shall include . . . [t]he transcript or portion thereof, if  
so required by a rule of the bankruptcy appellate panel." We  
have such a rule. See BAP Rule 8006-1.



1 bankruptcy court relied upon in making its decision. Without any  
2 factual findings or legal conclusions, we cannot determine  
3 whether the bankruptcy court abused its discretion in dismissing  
4 the debtor's chapter 7 case. We thus exercise our discretion and  
5 summarily affirm the bankruptcy court's decision granting the  
6 appellee's motion to dismiss.<sup>15</sup>

7  
8 B. Reconsideration order

9 Like the dismissal order, the reconsideration order is  
10 perfunctory; it does not specify the legal grounds underlying the  
11 denial of the reconsideration motion. Although the debtor sought  
12 reconsideration under Civil Rule 60(b),<sup>16</sup> the bankruptcy court  
13 conducted its analysis under Civil Rule 59(e).

14 The Civil Rules do not recognize motions for  
15 reconsideration. Captain Blythers, Inc. v. Thompson (In re  
16 Captain Blythers, Inc.), 311 B.R. 530, 539 (9th Cir. BAP 2004).  
17 The Civil Rules do provide, however, two avenues through which a  
18 party may obtain post-judgment relief: (1) a motion to alter or  
19 amend judgment under Civil Rule 59(e) and (2) a motion for relief  
20 from judgment under Civil Rule 60. Civil Rule 59(e) applies to  
21 bankruptcy proceedings under Rule 9023, and Civil Rule 60 applies

22  
23 <sup>15</sup> We note that nothing appears to prevent the debtor from  
24 commencing a new bankruptcy case. The dismissal order did not  
25 impose a bar to refiling. At oral argument, the Panel asked  
26 debtor's counsel why the debtor did not file a new chapter 7 case  
rather than pursuing a problematic appeal. No satisfactory  
answer was forthcoming.

27 <sup>16</sup> The debtor did not cite in the reconsideration motion the  
28 specific subsection of Rule 60(b) under which she sought relief.

1 to bankruptcy proceedings under Rule 9024. "When taken together,  
2 [Civil] Rule 59 and [Civil] Rule 60 encompass all possible post-  
3 judgment relief: Rule 59 incorporates common law principles of  
4 equity for granting new trials, and [Civil] Rule 60 preserves the  
5 relief afforded by ancient remedies for relief from settlement  
6 judgments while abolishing the separate and independent use of  
7 those remedies." In re Walker, 332 B.R. 820, 831-32 (Bankr. D.  
8 Nev. 2005)(internal citations omitted).

9 Civil Rule 59(e) allows for reconsideration if the  
10 bankruptcy court "(1) is presented with newly discovered  
11 evidence, (2) committed clear error or the initial decision was  
12 manifestly unjust, or (3) if there is an intervening change in  
13 controlling law. There may also be other, highly unusual  
14 circumstances warranting reconsideration." AC&S, Inc., 5 F.3d at  
15 1253 (internal citation omitted). Civil Rule 60(b) allows for  
16 reconsideration "only upon a showing of (1) mistake, surprise, or  
17 excusable neglect; (2) newly discovered evidence; (3) fraud;  
18 (4) a void judgment; (5) a satisfied or discharged judgment; or  
19 (6) extraordinary circumstances which would justify relief." Id.  
20 (citation omitted, internal quotation marks omitted).

21 Where a party files a motion for reconsideration within  
22 14 days after the entry of judgment, the motion is treated as a  
23 motion to alter or amend judgment under Civil Rule 59(e).<sup>17</sup> Am.  
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26 <sup>17</sup> As we mentioned earlier, Civil Rule 59(e) applies to  
27 bankruptcy proceedings under Rule 9023. Originally, the deadline  
28 by which to file a motion for reconsideration under Civil Rule  
59(e) was 10 days, but Rule 9023 was amended in 2009 to extend  
the time period to 14 days.

1 Ironworks & Erectors, Inc. v. N. Am. Constr. Corp., 248 F.3d 892,  
2 898-99 (9th Cir. 2001)(citation omitted). Otherwise, the motion  
3 is treated as a motion for relief from a judgment or order under  
4 Rule 60(b). Id. A party may not use a motion for  
5 reconsideration "to present a new legal theory for the first time  
6 or to raise legal arguments which could have been raised in  
7 connection with the original motion . . . [or] to rehash the same  
8 arguments presented the first time or simply to express the  
9 opinion that the court was wrong." Wall St. Plaza, LLC v. JSJF  
10 Corp. (In re JSJF Corp.), 344 B.R. 94, 104, aff'd and remanded,  
11 277 F.3d App'x 718 (9th Cir. 2006) (quoting In re Armstrong Store  
12 Fixtures Corp., 139 B.R. 347, 349-50 (Bankr. W.D. Pa.  
13 1992)(emphasis in original, citations omitted).

14 Here, the debtor filed the reconsideration motion before the  
15 bankruptcy court entered the dismissal order. We thus conduct  
16 our review of the bankruptcy court's decision on the  
17 reconsideration motion under Civil Rule 59(e).<sup>18</sup>

18 On appeal, the debtor argues that the bankruptcy court  
19 should have reconsidered the dismissal order because it committed  
20 clear error in its determinations on the motion to dismiss and  
21 the reconsideration motion. Specifically, the debtor contends  
22 that the bankruptcy court clearly erred when it (1) considered  
23 the appellees' allegations and evidence, though they were  
24 inadmissible, and (2) denied the reconsideration motion on the  
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26 <sup>18</sup> We reason that the filing of a motion for reconsideration  
27 of a bankruptcy court's order before entry of such order is  
28 analogous to the premature filing of a notice of appeal under  
Rule 8002(a).

1 dismissal order even though the dismissal order had not been  
2 entered at that time.

3 With respect to the first point, the debtor did not raise  
4 any specific evidentiary objections in her opposition to the  
5 motion to dismiss, and we cannot tell from the record what, if  
6 any, evidentiary objections were made by the debtor at the  
7 dismissal hearing. The debtor contended that the appellees made  
8 "baseless allegations" and failed to provide evidence to support  
9 them. The debtor never argued that the documents and statements,  
10 including declarations, provided by the appellees in their motion  
11 to dismiss were inadmissible on other than general grounds. As  
12 we stated earlier, we review the bankruptcy court's evidentiary  
13 rulings for an abuse of discretion. In re Slatkin, 525 F.3d at  
14 811. "To reverse on the basis of an erroneous evidentiary  
15 ruling, we must conclude not only that the bankruptcy court  
16 abused its discretion, but also that the error was prejudicial."  
17 Id. Here, the debtor failed to demonstrate that the bankruptcy  
18 court made erroneous evidentiary rulings and that its errors were  
19 prejudicial.

20 With respect to the second point, we do not fault the  
21 bankruptcy court for ruling on the reconsideration motion before  
22 the dismissal order was entered because it was the debtor who  
23 brought the reconsideration motion to its attention. The debtor  
24 had moved for reconsideration before the dismissal order was  
25 entered; she cannot now complain that the bankruptcy court acted  
26 prematurely on the reconsideration motion when she brought it in  
27 the first place.

28 The debtor also maintains that "highly unusual circumstances

1 were present" warranting reconsideration of the dismissal order.  
2 Appellant's Opening Brief at 6. According to the debtor, these  
3 highly unusual circumstances consisted of the debtor lacking  
4 effective legal representation at the time of the dismissal  
5 hearing. Specifically, she complains that Miller and Hussain  
6 both failed to provide competent legal advice, particularly in  
7 the way they construed the chapter 7 trustee's no asset report  
8 and in their failure to raise evidentiary objections in  
9 opposition to the motion to dismiss and at the dismissal hearing.  
10 She also complains that Hussain "abandoned her" by failing to  
11 appear at the dismissal hearing.

12 Reconsideration of orders or judgments after their entry is  
13 an extraordinary remedy that courts should use sparingly "in the  
14 interests of finality and conservation of judicial resources."  
15 Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th  
16 Cir. 2000)(quoting 12 James Wm. Moore et al., Moore's Federal  
17 Practice § 59.30[4](3d ed. 2000))(internal quotation marks  
18 omitted). Courts need to "preserve the delicate balance between  
19 the sanctity of final judgments and the incessant command of a  
20 court's conscience that justice be done in light of all the  
21 facts." Walker, 332 B.R. at 832 (quoting Kieffer v. Riske (In re  
22 Kieffer-Mickes, Inc.), 226 B.R. 204, 209 (9th Cir. BAP  
23 1998))(internal quotation marks omitted).

24 It is unfortunate that the debtor apparently chose  
25 incompetent counsel to represent her. But these are hardly  
26 extraordinary circumstances warranting reconsideration; sadly,  
27 ineffective legal representation is a circumstance that happens  
28 more often than we like to see. See, e.g., Herrero v. Guzman

1 (In re Guzman), 2010 WL 625994 at \*7 (9th Cir. BAP 2010) ("The  
2 Ninth Circuit has similarly found that attorney inexperience,  
3 poor litigation decisions, mistakes of law, or alleged  
4 malpractice are not encompassed under [Pioneer Inv. Servs. Co. v.  
5 Brunswick Assocs. Ltd. P'ship, 507 U.S. 380 (1993)]'s excusable  
6 neglect analysis [for Rule 60(b) motions].") (collecting cases,  
7 citations omitted); Latshaw v. Trainer Wortham & Co., Inc., 452  
8 F.3d 1097, 1101 (9th Cir. 2006); Casey v. Albertson's Inc., 362  
9 F.3d 1254, 1260 (9th Cir. 2004). It is not a highly unusual  
10 circumstance that warrants the extraordinary remedy of relief  
11 from a judgment or an order. The debtor moreover did not  
12 establish other grounds for reconsideration under Civil  
13 Rule 59(e). We thus conclude that the bankruptcy court did not  
14 abuse its discretion in denying the debtor's reconsideration  
15 motion.

#### 16 17 **CONCLUSION**

18 The debtor fails to show that the bankruptcy court abused  
19 its discretion in granting the motion to dismiss and denying the  
20 reconsideration motion. We AFFIRM.

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