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NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. NC-13-1331-JuKuPa
)	
JOHN SHEK,)	Bk. No. NC-12-33530
)	
Debtor.)	
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JOHN SHEK,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M *
)	
JANINA M. HOSKINS, Trustee,)	
)	
Appellee.)	
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Argued and Submitted on October 23, 2014
at San Francisco, California

Filed - November 3, 2014

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

Honorable Hannah L. Blumenstiel, Bankruptcy Judge, Presiding

Appearances: Appellant John Shek argued pro se; no brief filed
or other appearance by appellee.

Before: JURY, KURTZ, and PAPPAS, Bankruptcy Judges.

* This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8013-1.

1 Chapter 7¹ debtor John Shek appeals from the dismissal of
2 his case under § 521(i)(1) for his failure to file the
3 information required by § 521(a)(1)(B). We AFFIRM.

4 **I. FACTS²**

5 On December 18, 2012, debtor filed a skeletal chapter 7
6 petition.³ The petition was accompanied with a statement of
7 social security number, a mailing matrix, and an application to
8 proceed in forma pauperis. Rule 1007(c) requires the schedules
9 and statement of financial affairs to be filed with the petition
10 or within fourteen days thereafter. Debtor did not file his
11 schedules or a statement of financial affairs with the petition.

12 The bankruptcy court issued an Order For Individual(s) In
13 Chapter 7 and Chapter 13 Cases To File Required Documents and
14 Notice Re Automatic Dismissal, giving debtor notice that he was
15 required to file his schedules and other documents within
16 fourteen days of the order and, if he did not do so, the court
17 might dismiss the case. The notice also provided that within
18 forty-five days of the petition date, unless debtor requested
19 additional time, the case would be automatically dismissed

20
21 ¹ Unless otherwise indicated, all chapter and section
22 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,
23 and "Rule" references are to the Federal Rules of Bankruptcy
24 Procedure.

25 ² We have exercised our discretion to independently review
26 several electronically filed documents in debtor's underlying
27 bankruptcy case in order to develop a fuller understanding of the
28 record. See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert,
Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989).

³ This case followed dismissal of debtor's chapter 13 case
in August 2012 based on his failure to make plan payments.
[Bankr. Case No. 11-34444].

1 pursuant to § 521(i) if required documents had not been filed.

2 This order required debtor to file his schedules and other
3 missing documents by January 2, 2013. On that date, debtor
4 moved for an extension of time, which the bankruptcy court
5 granted, extending the time to January 28, 2013. Debtor did not
6 file the documents by this date and his case was dismissed on
7 January 30, 2013. The chapter 7 trustee filed a report of no
8 distribution, a final decree was entered, and the case was
9 closed.

10 Shortly after, debtor filed a Motion To Reopen, Reconsider
11 And Opposition To The Court's Motion to Dismiss. On May 9,
12 2013, the bankruptcy court held a hearing and granted debtor's
13 motion to reopen and also vacated the dismissal. The court
14 ordered debtor to file the missing schedules and other documents
15 by May 31, 2013. The bankruptcy court also warned debtor that
16 the deadline would not be extended again and, if he did not file
17 the documents on time, the case would be dismissed. The
18 bankruptcy court asked debtor if he understood. Debtor replied:
19 "Thanks, Your Honor."

20 At the hearing, the United States Trustee (UST) requested
21 that debtor waive the deadline for filing complaints objecting
22 to debtor's discharge and for the nondischargeability of certain
23 debts, which was originally set for March 25, 2013. After some
24 discussion between the court and debtor regarding what this
25 waiver meant, the bankruptcy court asked debtor if he agreed to
26 the extension of those deadlines. Debtor replied: "Thanks,
27 Your Honor. Yeah." On May 10, 2013, the bankruptcy court
28 entered the order consistent with its decision.

1 Three days later, debtor filed a motion for reconsideration
2 of the bankruptcy court's May 10, 2013 order. Debtor alleged
3 that the UST had made him waive his rights in exchange for the
4 reopening of his case, which violated his due process rights.
5 In response, the UST stated that her discussion with debtor
6 pertained to the waiving of the deadline for filing complaints
7 objecting to debtor's discharge and the nondischargeability of
8 certain debts because creditors would be extremely prejudiced if
9 new deadlines were not set.

10 On May 30, 2013, the bankruptcy court heard the matter.
11 The bankruptcy court explained to debtor that the extension of
12 various deadlines was to preserve the rights of creditors.
13 Because debtor's schedules and other documents were due the next
14 day, debtor requested another extension of time to file them.
15 Debtor alleged that he had made numerous attempts to communicate
16 with his accountant about his 2012 tax returns and the
17 accountant would not respond. In the end, the bankruptcy court
18 denied debtor's motion for reconsideration, but gave him an
19 additional two weeks to file his schedules and statement of
20 financial affairs. The court stated that there would be no
21 other extension and, if the documents were not filed on time,
22 the case would be dismissed. Debtor confirmed that he
23 understood.

24 The bankruptcy court entered the order on June 4, 2013,
25 which provided in part:

26 (2) The Motion for Extension of Time is granted. On or
27 before June 13, 2013, Debtor shall file: (a) Summary
28 of Schedules; (b) Statistical Summary of Certain
Liabilities; (c) Schedules A-J; (d) Declaration re
Schedules; (e) Statement of Financial Affairs;

1 (f) Statement of Current Monthly Income (Form B22);
2 (g) Statement re Payment Advice; and (h) Exhibit D.
3 No further extensions of this deadline will be given.

4 (3) If Debtor fails to comply timely and fully with
5 paragraph(2) of this order, the Court will dismiss
6 this case without further notice or hearing.

7 Debtor did not file the required documents by June 13, 2013. On
8 June 14, 2013, the bankruptcy court entered the order dismissing
9 debtor's case (Dismissal Order).

10 On the same day, debtor filed Schedules A, B, C, D, E, and
11 I, and a declaration concerning his schedules. Debtor also
12 filed a motion to extend the time to file the remaining
13 documents and exhibits.

14 On June 20, 2013, the chapter 7 trustee filed a report of
15 no distribution, a final decree was entered, and the case was
16 closed. The next day, debtor filed a notice of appeal (NOA)
17 from the Dismissal Order.⁴

18 **II. JURISDICTION**

19 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
20 §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C.

21 ⁴ On the same day that he filed the NOA from the Dismissal
22 Order, debtor filed a Motion To Reopen And A Motion To Stay The
23 Order And Notice of Dismissal. Debtor asserted that the delay in
24 filing the documents was caused by mental stress, financial
25 hardship and his health issues. He further pointed out that he
26 missed the deadline for filing the documents by only one day and
27 this was because he thought May had thirty days instead of
28 thirty-one. Finally, debtor represented that he had contacted
his accountant several times about his tax returns, but she did
not respond. Thus, he could not timely file the returns. The
bankruptcy court denied debtor's motions. The court found that
debtor had been granted multiple extensions and that he was
informed no further extensions would be given. Finally, the
court noted that debtor's filings on June 14, 2013, were
incomplete. Debtor did not appeal from this order.

1 § 158.

2 **III. ISSUE**

3 Whether the bankruptcy court erred by dismissing debtor's
4 bankruptcy case under § 521(i).

5 **IV. STANDARD OF REVIEW**

6 We review the bankruptcy court's order dismissing debtor's
7 case based on § 521(i) de novo. Wirum v. Warren (In re Warren),
8 568 F.3d 1113, 1116 (9th Cir. 2009).

9 **V. DISCUSSION**

10 **A. The Bankruptcy Court Did Not Commit Reversible Error In**
11 **Dismissing Debtor's Case.**

12 Pursuant to § 521(a)(1), a debtor must file a list of
13 creditors, and, unless otherwise ordered, various other
14 documents including a schedule of assets and liabilities, a
15 schedule of current income and current expenditures, and a
16 statement of financial affairs. See § 521(a)(1)(A) and (B).⁵
17 "[I]f an individual debtor in a voluntary case under chapter 7
18 . . . fails to file all of the information required under
19 subsection (a)(1) within 45 days after the date of the filing of
20 the petition, the case shall be automatically dismissed
21 effective on the 46th day after the date of the filing of the
22 petition." See § 521(i)(1).

23 Exceptions to the automatic dismissal are made (1) if the
24 court grants a debtor's request for an extension beyond the
25 forty-five days; (2) if the court grants a trustee's motion
26

27 ⁵ Only the documents under § 521(a)(1)(B) are at issue in
28 this case.

1 requiring an exception based on the debtor's good faith and the
2 best interests of creditors; or (3) if the court exercises its
3 discretion to waive the filing requirements because it
4 determines the information is unnecessary or because dismissal
5 will reward abuse by the debtor. § 521(i)(3), (4); Warren,
6 568 F.3d at 1118-19. On appeal, debtor argues that the
7 bankruptcy court erred in dismissing his case because all three
8 of these exceptions apply.

9 As to the first exception, debtor asserts that he
10 demonstrated his need for a forty-five day extension at the
11 May 30, 2013 hearing based on his financial hardship and the
12 failure of his accountant to respond to him regarding his 2012
13 tax returns. Debtor argues that due to his circumstances he was
14 entitled to a forty-five day extension under § 521(i)(3) instead
15 of the fourteen days granted by the bankruptcy court.

16 This argument is not persuasive in light of the multiple
17 extensions granted by the bankruptcy court. The bankruptcy
18 court granted debtor's first request for an extension of time to
19 file the required documents from January 2, 2013 to January 28,
20 2013. He did not comply and his case was dismissed. Upon
21 reopening debtor's case, the bankruptcy court granted him
22 another extension of time to file the documents to May 31, 2013.
23 At the May 30, 2013 hearing, although his documents were due the
24 next day, the bankruptcy court gave debtor another fourteen
25 days, or until June 13, 2013, to file the missing documents.
26 This additional fourteen-day extension of time for filing the
27 documents was well past the forty-five day period allowed under
28 § 521(i)(3) for extensions of time. Accordingly, we find no

1 error on this ground.

2 Next, as to the second exception, debtor contends he acted
3 in good faith and that it would advance the progress of the case
4 if it were allowed to proceed. See § 521(i)(4). According to
5 debtor, the bankruptcy court refused to evaluate his good faith
6 efforts to file the required documents. Here, however, the
7 trustee never filed a motion requesting a good faith exception
8 to the automatic dismissal so that exception does not apply.
9 Indeed, at the May 30, 2013 hearing, the trustee confirmed with
10 the bankruptcy court that if debtor did not file the required
11 documents, his case would be automatically dismissed. At no
12 time did the trustee advocate against dismissal based on
13 debtor's good faith. We thus find no error on this ground.

14 Finally, as to the last exception, debtor argues that the
15 bankruptcy court had discretion to waive the filing requirements
16 under § 521(a)(1)(B) after the forty-five day period set forth
17 in § 523(i), and it should have done so under these
18 circumstances. Debtor asserts that his monthly income was 100%
19 below the Poverty Guidelines and thus his statement of monthly
20 income was "not that important." He further maintains that he
21 was unable to produce his tax return due to circumstances beyond
22 his control.

23 Debtor's waiver argument is misplaced. First, there is no
24 indication in the record that he ever made a request to waive
25 the filing of some, or all, of the required documents based on
26 the reasons he now asserts, or for that matter any other reason.
27 Because debtor raises this issue for the first time on appeal,
28 it is waived. See Ganis Credit Corp. v. Anderson (In re Jan

1 Weilert RV, Inc.), 315 F.3d 1192, 1199 (9th Cir. 2003).

2 Second, a court may, in some circumstances, excuse the
3 filing of information required by § 521(a)(1)(B) after the time
4 for filing such information expires. In Warren, the debtors
5 sought dismissal under § 521(i) in an attempt to prevent
6 investigation into their financial situation and the
7 circumstances surrounding the filing. In re Warren, 568 F.3d at
8 1115. Because § 521(a)(1)(B) does not expressly prohibit courts
9 from excusing compliance with the filing provisions of
10 § 521(a)(1)(B) (by "ordering otherwise") before the expiration
11 of the ninety days after the commencement of a bankruptcy case,
12 and in light of the purpose of the statute to prevent abuse of
13 the bankruptcy process, the Ninth Circuit in Warren held that a
14 court may waive compliance with § 521(a)(1)(B) after the
15 expiration of the time to file the information. Id. at
16 1116-1119.

17 No such facts were presented here. Debtor did not seek the
18 dismissal of his case like the debtor in Warren and there is
19 nothing in the record that shows abuse of the bankruptcy process
20 by preventing a financial investigation. Indeed, debtor argues
21 against such abuse stating that he has acted in good faith.
22 Under these circumstances, there was no need for the bankruptcy
23 court to determine whether it was necessary to waive the filing
24 requirements to prevent abuse. Therefore, debtor's waiver
25 argument is not a basis for reversal.

26 In sum, having found no error, we conclude that the
27 bankruptcy court properly dismissed debtor's case due to his
28 failure to timely file his schedules and other documents despite

1 the numerous extensions.

2 **B. Remaining Issues**

3 Debtor also raised an issue on appeal that related to his
4 "waiver of rights" in exchange for reopening his case. This
5 waiver concerns the extension of the deadline for filing a
6 complaint objecting to debtor's discharge and the
7 nondischargeability of certain debts. This issue is irrelevant
8 to the outcome of this appeal.

9 Debtor further contends that he missed the court's deadline
10 by only one day and therefore his case should not have been
11 dismissed. We are not persuaded. The debtor was required to
12 timely and fully comply with the bankruptcy court's order to
13 avoid dismissal of his case. Even if the late-filed documents
14 could be excused, debtor did not fully comply because some of
15 the required documents were still missing.

16 Debtor also challenges the accuracy of the transcripts that
17 he included in the excerpts of record. Three transcripts were
18 prepared and filed with the bankruptcy court in the underlying
19 case. Debtor filed copies of all three transcripts with the
20 Panel which include interlineations indicating that he believes
21 that some of the statements in the transcripts are inaccurate.
22 Debtor submitted papers to the Panel requesting that the
23 transcripts be changed to reflect that different statements were
24 made at the bankruptcy court than the statements included in the
25 transcripts.

26 On March 3, 2014, the bankruptcy court entered an order
27 finding that the transcripts filed by the court reporter were an
28 accurate reflection of the statements made at the bankruptcy

1 court hearings. A "trial court's factual finding that
2 transcripts are accurate and complete cannot be disturbed unless
3 clearly erroneous." United States v. Anzalone, 886 F.2d 229,
4 232 (9th Cir. 1989) (citing Maine v. Taylor, 477 U.S. 131,
5 144-45 (1986)). "[A]ssuming there were omissions in the
6 transcripts, appellant cannot prevail without a showing of
7 specific prejudice." Id.

8 Here, the bankruptcy court has independently verified that
9 the transcripts are accurate. Moreover, debtor has not
10 identified any substantive mistakes in the transcripts that
11 might have an impact on the outcome of this appeal. Therefore,
12 we reject debtor's challenge to the accuracy of the transcripts.

13 **VI. CONCLUSION**

14 For the reasons stated, we AFFIRM.