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NOT FOR PUBLICATION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

5	In re:)	BAP No.	CC-14-1450-TaKuPe
6	MIRIAM M. LOPEZ,)	Bk. No.	2:14-bk-12175-BB
7	Debtor.)		
8	_____)		
9	MIRIAM M. LOPEZ,)		
10	Appellant,)		
11	v.)	MEMORANDUM*	
12	DAVID ALAN GILL, Chapter 7)		
13	Trustee,)		
14	Appellee.)		

Argued and Submitted on July 23, 2015
at Pasadena, California

Filed - September 3, 2015

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

Honorable Sheri Bluebond, Chief Bankruptcy Judge, Presiding

Appearances: Wendolyn E. Arnold argued for appellant; Matthew
F. Kennedy argued for appellee.

Before: TAYLOR, KURTZ, and PERRIS,** 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 8024-1(c)(2).

** The Honorable Elizabeth L. Perris, United States
Bankruptcy Judge for the District of Oregon, sitting by
designation.

1 hereafter as the "Vehicles"). The Debtor indicated that the
2 Truck was used "for work." Her amended Schedule I, however,
3 evidenced that she was unemployed.

4 The Debtor's amended schedules also included a \$4,000 tax
5 refund that she received post-petition. The Debtor did not
6 claim any exemption in the refund. After receipt, she turned
7 the refund over to her bankruptcy attorney, Montaz M. Gerges
8 ("Gerges"). The Trustee unsuccessfully sought turnover from
9 Gerges, who continued to hold the tax refund as of the oral
10 argument in this appeal.

11 Six months into the case,³ the Trustee objected to the
12 exemptions claimed in the Property and in the Vehicles. In
13 particular, he sought complete disallowance of the exemption as
14 to the Truck and a partial disallowance of the exemptions
15 claimed in the Property and the Motorcycle. In the same
16 document ("Trustee's Motion"), he also moved for turnover of the
17 tax refund and the Vehicles and requested a second extension of
18 the discharge objection deadline. As the Trustee made clear
19 later, he sought possession of the Vehicles in order to value
20 them.

21 The Debtor did not formally oppose or respond to the
22 Trustee's Motion. Instead, she vigorously responded to the
23

24 ³ During this time, the Trustee obtained a bankruptcy
25 court order extending the time to object to the Debtor's
26 discharge, and the Debtor moved to convert her case from
27 chapter 7 to chapter 13. The bankruptcy court denied the
28 Debtor's conversion motion in an order from which she also
appeals. We dispose of that appeal in a separate memorandum
decision.

1 Trustee's opposition to her concurrently pending motion to
2 convert and included some argument in support of her claimed
3 exemptions in that document (the "Response"). In the Response,
4 Gerges, on behalf of the Debtor, personally attacked the Trustee
5 and broadly alleged dishonesty, questioned his alleged valuation
6 of estate assets, and more specifically alleged that the Trustee
7 sought recovery of estate assets only for personal gain. Gerges
8 concluded with an unsupported, but less bombastic, assertion
9 that the Debtor was entitled to claim an enhanced homestead
10 exemption on account of her age and because she was legally
11 disabled.

12 Prior to the hearing on the Trustee's Motion, the
13 bankruptcy court issued a tentative ruling,⁴ indicating its
14 intent to sustain the Trustee's objections and grant his
15 requested relief. The ruling noted the Debtor's failure to
16 supply evidence showing that she was entitled to the enhanced
17 homestead exemption based on disability and agreed that an
18 inoperable pickup truck could not be used in the operation of
19 the debtor's business. The ruling concluded by asking how the
20 Debtor wished to allocate her undisputed \$2,900 vehicle
21 exemption.

22 Only the Trustee appeared at the hearing, and the
23 bankruptcy court granted relief consistent with its tentative
24 ruling. Having received no input from the Debtor regarding
25 allocation of the vehicle exemption, the bankruptcy court

26
27 ⁴ The September 3, 2014 tentative ruling is not in the
28 record. It was instead obtained from the bankruptcy court's
website: <http://www.cacb.uscourts.gov/>.

1 allowed the Debtor additional time to make an election but also
2 stated that, unless the Debtor timely designated otherwise, it
3 would allocate the exemption to the SUV.

4 The subsequent order provided relief consistent with the
5 bankruptcy court's oral ruling; because the Debtor took no
6 position on allocation of the vehicle exemption, the exemption
7 attached to the SUV. The order also required that the Debtor
8 turn over possession of the Vehicles and the tax refund to the
9 Trustee. The Debtor timely appealed.

10 **JURISDICTION**

11 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
12 §§ 1334 and 157(b)(2)(B), (E), and (O). We have jurisdiction
13 under 28 U.S.C. § 158.

14 **ISSUES⁵**

- 15 1. Whether the bankruptcy court erred when it sustained the
16 Trustee's objections to the claimed exemptions.
- 17 2. Whether the Trustee overvalued estate assets.
- 18 3. Whether the bankruptcy court erred when it extended the
19 Trustee's time to object to the Debtor's discharge.

20 **STANDARDS OF REVIEW**

21 As a question of law, we review de novo the right of a
22 debtor to claim an exemption. Elliot v. Weil (In re Elliott),
23 523 B.R. 188, 191 (9th Cir. BAP 2014). A bankruptcy court's
24 findings of fact as to a claimed exemption, however, are

25
26 ⁵ The Debtor also argues that the bankruptcy court abused
27 its discretion in extending the deadline to object to
28 exemptions. Not only did the Debtor fail to raise this issue
before the bankruptcy court, it is beyond the scope of the order
on appeal. Therefore, we do not further address the issue.

1 reviewed for clear error. Id. A finding of fact is clearly
2 erroneous if illogical, implausible or without support from
3 inferences that may be drawn from facts in the record. See
4 Trafficschool.com v. Edriver Inc., 653 F.3d 820, 832 (9th Cir.
5 2011).

6 We review for an abuse of discretion the bankruptcy court's
7 decision to grant a timely motion to extend the time for filing
8 a complaint objecting to the debtor's discharge. See Willms v.
9 Sanderson, 723 F.3d 1094, 1103 (9th Cir. 2013). A bankruptcy
10 court abuses its discretion if it applies an incorrect legal
11 standard or misapplies the correct legal standard, or if its
12 factual findings are clearly erroneous. Shahrestani v. Alazzeh
13 (In re Alazzeh), 509 B.R. 689, 692 (9th Cir. BAP 2014).

14 **DISCUSSION**

15 The reasons offered by the Debtor for her failure to oppose
16 the Trustee's Motion are conflicting. In her brief on appeal,
17 the Debtor contends that she "did not oppose . . . since she had
18 raised the same issues" in the Response. Apl't Op. Br. at 14.
19 But, at oral argument, the Debtor asserted that neither she nor
20 her counsel had notice of the hearing (or, by extension, the
21 Trustee's Motion). As a result, they did not oppose or attend
22 the hearing and were unaware of the bankruptcy court's
23 determinations until after the ruling.

24 As the Trustee pointed out, the record belies counsel's
25 assertion. The proof of service attached to the Trustee's
26 Motion evidences that the Debtor was served with the Trustee's
27 Motion and notice of the related hearing at the Property via
28 U.S. mail. In addition, pursuant to general orders and the

1 local bankruptcy rules for the Central District of California,
2 Gerges was served electronically via the bankruptcy court's
3 Notice of Electronic Filing. In both cases, service occurred on
4 August 6, 2014 - approximately 26 days before the hearing. The
5 allegation of a lack of notice or knowledge of the Trustee's
6 Motion is simply untrue.

7 Against this background, most of the Debtor's arguments are
8 presented for the first time on appeal. Even so, given the
9 legal issues implicated and the fact that the record is fully
10 developed, we exercise our discretion and briefly consider the
11 Debtor's arguments. See Mano-Y & M, Ltd. v. Field (In re The
12 Mortg. Store, Inc.), 773 F.3d 990, 998 (9th Cir. 2014).

13 **A. The bankruptcy court did not err in disallowing the**
14 **Debtor's claimed exemptions.**

15 The Debtor argues broadly that the bankruptcy court erred
16 by finding bad faith conduct or prejudice when it disallowed
17 some of her claimed exemptions. Relying on Law v. Siegel,
18 134 S.Ct. 1188 (2014), she argues that a bankruptcy court may
19 not disallow an amended exemption claim on the basis of bad
20 faith conduct.

21 Unfortunately for the Debtor, however, the bankruptcy court
22 disallowed the exemptions based on the Debtor's failure to
23 provide evidence of entitlement to the state law exemptions she
24 claimed. It did not disallow the exemptions pursuant to
25 § 105(a), let alone make a determination of bad faith conduct or
26 prejudice. Consequently, the Debtor's myopic focus on the
27 ability to liberally amend exemptions and discussion of the
28 impact of Law v. Siegel is inapt.

1 Further, after applying de novo review, we discern no error
2 in the bankruptcy court's decisions to disallow or limit the
3 claimed exemptions.

4 **1. Partial disallowance of the homestead exemption**
5 **in the Property.**

6 California law provides for an enhanced homestead exemption
7 in the amount of \$175,000 to a person who is: (1) 65 years old
8 or older; (2) "physically or mentally disabled who as a result
9 of that disability is unable to engage in substantial gainful
10 employment"; or (3) 55 years old or older with an annual gross
11 income of no more than \$25,000 (or \$35,000, if married). Cal.
12 Code Civ. P. § 704.730(a)(3)(A)-(C). These provisions are in
13 the disjunctive; thus, a person qualifies for the enhanced
14 homestead exemption if she meets any one of the three
15 requirements.

16 Here, the bankruptcy court sustained the Trustee's
17 objection because the Debtor failed to provide evidence that she
18 qualified for an enhanced homestead exemption under any theory.
19 After the Trustee called into question the enhanced homestead
20 exemption claim, the burden shifted to the Debtor to provide
21 evidence of entitlement. See In re Tallerico, 532 B.R. 774,
22 790-91 (Bankr. E.D. Cal. 2015) (extensive discussion on the
23 evidentiary burdens as to California exemption claims). No one
24 disputes that the Debtor was not 65; thus, she needed to provide
25 evidence of a qualifying disability or evidence that her
26 household's annual gross income fell below \$35,000. Her
27 schedules made clear that she did not meet the income
28 requirement given her husband's income. She never provided

1 declaratory or documentary evidence of a qualifying disability.

2 The Debtor's schedules did evidence that she received
3 workers' compensation benefits during the bankruptcy case, but
4 not at the date of petition. Case authority makes clear that a
5 qualifying disability must exist as of the date of petition.
6 See Neff v. Denoce (In re Neff), 2014 WL 448885, at *8 (9th Cir.
7 BAP Feb. 4, 2014); In re Rolland, 317 B.R. 402, 413, 419-20
8 (Bankr. C.D. Cal. 2004); In re Rostler, 169 B.R. 408, 411
9 (Bankr. C.D. Cal. 1994).

10 And, as Debtor's counsel acknowledged at oral argument, the
11 showing of disability necessary for CCP § 704.730(a)(3)(B) is
12 not per se equivalent to that required for receipt of workers'
13 compensation under California law. The enhanced homestead
14 exemption requires a disability that precludes "substantial
15 gainful employment"; that term is defined as significant mental
16 or physical work activity, done for pay or profit, in a
17 competitive or self-employed position. In re Rostler, 169 B.R.
18 at 412. There is a rebuttable presumption of an inability to
19 engage in substantial gainful employment if the debtor receives
20 social security or supplemental social income benefits. Cal.
21 Code Civ. P. § 704.730(a)(3)(B). A qualifying workers'
22 compensation disability, however, may be of temporary duration
23 and based on a less than total disability that merely impairs
24 the ability to work. Thus, evidence that the Debtor received
25 post-petition workers' compensation benefits was not dispositive
26 on the issue of whether she was precluded from substantial
27 gainful employment as a result of disability; additional
28 evidence on this point was required.

1 **2. Disallowance of the exemption claim in the Truck.**

2 California law also provides for an exemption in
3 "[p]ersonal property necessary to and used in exercise of trade,
4 business or profession." Cal. Code Civ. P. § 704.060. A
5 vehicle claimed under this exemption must be necessary to the
6 debtor's trade, business, or profession. In re Rawn, 199 B.R.
7 733, 735 (Bankr. E.D. Cal. 1996).

8 Here, again, the bankruptcy court sustained the Trustee's
9 objection because the Debtor failed to provide evidence that the
10 Truck qualified for a California tool of the trade exemption.
11 The Debtor failed to provide any evidence as to how she used the
12 Truck, and the bankruptcy court was reasonably skeptical of this
13 claim. It noted that the Debtor's schedules indicated that the
14 truck was inoperable. Further, in the Response, the Debtor
15 asserted that her non-debtor husband used the Motorcycle for
16 work - not the Truck. Thus, there was no evidence in the record
17 to support the Debtor's entitlement to a tool of the trade
18 exemption under Cal. Code Civ. P. § 704.060.

19 **B. Whether the Trustee overvalued estate assets.**

20 The Debtor also argues that the Trustee improperly inflated
21 the values of the assets, so as to increase the equity available
22 for liquidation, notwithstanding her claimed exemptions.
23 Nothing in the record, however, evidences that the bankruptcy
24 court made any valuation determinations. While emails between
25 the Trustee and Gerges evidence a valuation dispute,
26 that dispute never carried over to the bankruptcy court for
27 adjudication. Indeed, the Trustee requested possession of the
28 Vehicles for the purpose of subsequent valuation.

1 Further, given our conclusion that the bankruptcy court
2 appropriately sustained the Trustee's objections to exemptions,
3 whether he overvalued assets (which we do not determine) is
4 ultimately irrelevant.

5 Finally, the equity issue in regards to the SUV is now
6 irrelevant. During oral argument, Debtor's counsel disclosed,
7 for the first time since case commencement and in contradiction
8 to the Debtor's schedules, that the SUV was a leased vehicle.
9 Both parties conceded that the leased SUV would not generate
10 equity for the estate.

11 **C. The bankruptcy court did not abuse its discretion in**
12 **extending the deadline to file an objection to**
13 **discharge.**

14 Finally, the Debtor argues that, given the absence of
15 evidence of bad faith, there is no local rule, statute, or case
16 authority that permitted the bankruptcy court to extend the time
17 to object to the Debtor's discharge. Once again, we disagree.

18 Rule 4004 provides that a complaint objecting to a debtor's
19 chapter 7 discharge must "be filed no later than 60 days after
20 the first date set for the [§ 341(a)] meeting of creditors."
21 That time may be extended, but the motion must be filed prior to
22 the expiration of the 60-day date.

23 Here, the 60th day following the initial § 341(a) meeting
24 was May 16, 2014. What the Debtor fails to mention on appeal is
25 that the Trustee timely moved for and obtained an initial order
26 from the bankruptcy court extending the discharge objection date
27 to August 16, 2014. The Trustee then sought a second extension
28 of the discharge objection deadline in the Trustee's Motion and

1 filed the Trustee's Motion prior to the extended deadline date.

2 Neither the Code nor the national rules nor the local rules
3 nor case authority restricts or eliminates the bankruptcy
4 court's authority to grant a second deadline extension when the
5 request is timely. Nor does any authority limit the
6 justification for an extension request to a debtor's bad faith.

7 Here, the second extension - an additional 90 days - was
8 timely and neither unreasonable nor capricious. The Trustee
9 stated, repeatedly, that his efforts to obtain additional,
10 necessary information from the Debtor and Gerges were
11 consistently thwarted. Nothing in the record suggests
12 hyperbolic rhetoric on his part. We, thus, discern no abuse of
13 discretion.

14 **CONCLUSION**

15 Based on the foregoing, we AFFIRM the bankruptcy court.
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