

OCT 13 2016

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No.	AZ-15-1396-FLJu
6	RODNEY FRANK KRENZ,)	Bk. No.	2:10-bk-04317-DPC
7	Debtor.)		
8	_____)		
9	TRACY A. NEUMAN,)		
10	Appellant,)		
11	v.)	MEMORANDUM*	
12	RODNEY FRANK KRENZ,)		
13	Appellee.)		

Submitted Without Argument
on September 23, 2016

Filed - October 13, 2016

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

Honorable Daniel P. Collins, Chief Bankruptcy Judge, Presiding

Appearances: Appellant Tracy A. Neuman, pro se, on brief; David Allegrucci on brief for Appellee Rodney Frank Krenz.

Before: FARIS, LAFFERTY, and JURY, 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.

1 equity loan on her solely-owned real property and loaned the
2 \$100,000 proceeds to Mr. Krenz. Mr. Krenz routinely made monthly
3 payments of \$600 to Ms. Neuman.

4 In February 2010, Mr. Krenz filed his chapter 13 bankruptcy
5 petition. He did not include the debt owed to Ms. Neuman in his
6 schedules. Ms. Neuman did not receive formal notice of the
7 bankruptcy, but she said that she was aware that he had filed his
8 petition. The court confirmed Mr. Krenz's chapter 13 plan, which
9 provided for payments over a sixty-month period. Mr. Krenz
10 continued to make the \$600 monthly payments to Ms. Neuman
11 postconfirmation.

12 While his chapter 13 case was still pending, in February
13 2013, Mr. Krenz filed for divorce from Ms. Neuman. In the months
14 that followed, Mr. Krenz tried to convince Ms. Neuman to agree to
15 sell their Marital Residence. When Ms. Neuman refused - and
16 outright threatened to obstruct the sale - Mr. Krenz obtained an
17 order of protection against Ms. Neuman. As a result, Mr. Krenz
18 obtained exclusive use of the Marital Residence. Ms. Neuman
19 contended that Mr. Krenz used the order of protection in an
20 attempt to strong-arm her to sell the Marital Residence.

21 Shortly thereafter, in January 2014, Mr. Krenz ceased making
22 monthly payments to Ms. Neuman for the loan obligation.

23 In August 2014, seven months before the completion of his
24 chapter 13 plan payments, Mr. Krenz amended his schedules to
25 include the debt he owed to Ms. Neuman. Ms. Neuman received
26 notice of the amendment and objected to the amendment by letter
27 to the bankruptcy court dated August 19, 2014. She argued that
28 Mr. Krenz should not be allowed to discharge the debt. She

1 stated that he was hiding money and trying to avoid the loan
2 obligation.

3 The court held a hearing on the objection. Ms. Neuman
4 acknowledged that she had actual knowledge of Mr. Krenz's
5 bankruptcy filing in 2010. At the conclusion of the hearing, the
6 court overruled Ms. Neuman's objection to the amendment.
7 However, the court allowed Ms. Neuman to file a claim against
8 Mr. Krenz's estate. The court issued court minutes ("Minutes")
9 memorializing its ruling. Ms. Neuman timely filed her proof of
10 claim.

11 Months later, in June 2015, Ms. Neuman wrote a letter to the
12 bankruptcy court alleging that Mr. Krenz had been "playing the
13 system" and making himself look "poor on paper." She stated that
14 she was suffering financial hardship due to Mr. Krenz's failure
15 to make payments on the \$100,000 loan and that he was attempting
16 to avoid the loan obligation by belatedly adding it to his
17 schedules. She also argued that he took five or six vacation
18 trips each year.

19 Ms. Neuman additionally alleged that Mr. Krenz had secretly
20 purchased real property at East Vinedo Drive in Tempe, Arizona
21 (the "Vinedo Property") around the time he had filed for divorce.
22 All documents indicated that Mr. Krenz's sister, Kerry Arent,
23 purchased the Vinedo Property in March 2013. However, Ms. Neuman
24 contended that Ms. Arent conspired with Mr. Krenz to purchase the
25 Vinedo Property in her name on behalf of Mr. Krenz. Ms. Neuman
26 alleged that Mr. Krenz began to "secretly rehab" the Vinedo
27 Property without her knowledge and spent thousands of dollars on
28 furnishings.

1 The bankruptcy court held a hearing regarding Ms. Neuman's
2 allegations. The court ordered Ms. Neuman to provide Mr. Krenz
3 with the evidence substantiating her claims.

4 On September 15, 2015, the court again held a hearing on
5 Ms. Neuman's allegations. Mr. Krenz represented that he had
6 assembled all of the necessary information to refute Ms. Neuman's
7 allegations and provided it to the chapter 13 trustee
8 ("Trustee"). The Trustee reported that he had not uncovered any
9 indicia of fraud or bad faith; there was only evidence of "a
10 painful divorce, but no evidence of fraud." Ms. Neuman argued at
11 length about Mr. Krenz's allegedly bad or fraudulent behavior,
12 including the alleged scheme to bar her from the Marital
13 Residence while he secretly acquired the Vinedo Property for
14 himself. The court decided to treat her letter as an objection
15 to discharge and set an evidentiary hearing on October 15, 2015
16 (the "Evidentiary Hearing").

17 Ms. Neuman has not provided the Panel with the complete
18 transcript of the October 15 Evidentiary Hearing. However, we
19 know that at the conclusion of Ms. Neuman's evidence, Mr. Krenz
20 moved for a directed verdict. The court granted the motion and
21 made a detailed oral ruling. The court noted the vitriol between
22 the parties but did not find any bad faith or fraud. The court
23 accepted the testimony of Ms. Arent that she purchased the Vinedo
24 Property for use as a vacation home in the winter and that she
25 allowed Mr. Krenz to stay there for free during his divorce and
26 bankruptcy proceedings.

27 Regarding Mr. Krenz's allegedly extravagant travel, the
28 court found that the costs were "fairly nominal" and that

1 Mr. Krenz had adequately explained the trips. The court also
2 considered Ms. Neuman's newly-raised argument regarding the
3 proceeds of a check paid to Ms. Neuman and deposited in a joint
4 bank account and later loaned to Mr. Krenz, but held that it
5 constituted a loan and not a misappropriation or theft.

6 Regarding Ms. Neuman's allegation that Mr. Krenz schemed to
7 evict her from the Marital Residence to force her to agree to
8 sell the house, the court noted that "it wouldn't be at all
9 surprising to me that it is exactly what he planned and exactly
10 what he concocted as a way of getting to Ms. Newman [sic] because
11 that's in effect the course of dealing between the parties and
12 how they treated each other so horribly." Nevertheless, the
13 court determined that it did not need to make any finding on this
14 matter, because it did not concern the discharge or the denial
15 thereof.

16 Similarly, the court made no finding regarding whether
17 Mr. Krenz perjured himself in state court, because it was not
18 relevant to the bankruptcy proceedings.

19 In conclusion, the court stated that Ms. Neuman did not
20 satisfy "her burden of proving by a preponderance of the evidence
21 that he has defrauded the Court, that he has stolen assets, that
22 [he] has hidden assets, [or] that he has perjured himself in this
23 bankruptcy proceeding." The court entered an order ("Order")
24 denying Ms. Neuman's objection to discharge on November 10, 2015.

25 On November 12, Ms. Neuman appealed both the September 25,
26 2014 Minutes denying the objection to amendment and the
27 November 10, 2015 Order denying the objection to discharge.

28

1 applicable through Rule 7052.³ “The court’s findings of fact
2 under [Civil Rule] 52(c) are reviewed for clear error, while its
3 conclusions of law are reviewed de novo.” Kuan v. Lund
4 (In re Lund), 202 B.R. 127, 129 (9th Cir. BAP 1996).

5 **DISCUSSION**

6 **A. The bankruptcy court did not deny Ms. Neuman due process.**

7 Ms. Neuman first argues that she was denied due process when
8 the court belatedly allowed Mr. Krenz to amend his schedules to
9 add the debt owed to Ms. Neuman, because she did not have an
10 opportunity to object to the confirmation of Mr. Krenz’s plan or
11 object to the dischargeability of her debt. We disagree.

12 **1. Ms. Neuman’s appeal of the September 25, 2014 Minutes**
13 **is untimely.**

14 As an initial matter, Mr. Krenz argues that Ms. Neuman’s
15 appeal of the September 25, 2014 Minutes was untimely, because
16 she did not appeal the ruling until November 12, 2015. He argues
17 that the Minutes were an immediately appealable final order and
18 that its finality was not dependent upon any other event. We
19 agree.

20 The Ninth Circuit has advised that “[a] disposition is final

21
22 ³ This Panel has previously clarified that:

23 Motions for directed verdicts are now called motions
24 for judgment as a matter of law and are governed by
25 Civil Rule 50. This rule applies in bankruptcy cases
26 only if the matter is tried before a jury. Because
27 this was a bench trial, [the] motion was a motion for a
28 judgment on partial findings under Rule 7052(c), which
incorporates Civil Rule 52(c).

Diener v. McBeth (In re Diener), 483 B.R. 196, 206 n.6 (9th Cir.
BAP 2012) (internal citation omitted).

1 if it contains a complete act of adjudication, that is, a full
2 adjudication of the issues at bar, and clearly evidences the
3 judge's intention that it be the court's final act in the
4 matter." Brown v. Wilshire Credit Corp. (In re Brown), 484 F.3d
5 1116, 1120 (9th Cir. 2007) (citations and internal quotation
6 marks omitted). This circuit "follow[s] a pragmatic approach to
7 finality in bankruptcy - a complete act of adjudication need not
8 end the entire case, but need only end any of the interim
9 disputes from which an appeal would lie." Id. at 1121 (citation
10 and internal quotation marks omitted). We have noted that
11 bankruptcy law's "flexible finality" principle "focuses upon
12 whether the order affects substantive rights and finally
13 determines a discrete issue." Belli v. Temkin (In re Belli),
14 268 B.R. 851, 854 (9th Cir. BAP 2001) (citations omitted).

15 Further, this Panel has repeatedly stated that "[a] minute
16 entry may constitute a dispositive order for notice of appeal
17 purposes if it: (1) states that it is an order; (2) is mailed to
18 counsel; (3) is signed by the clerk who prepared it; and (4) is
19 entered on the docket sheet." Mullen v. Hamlin (In re Hamlin),
20 465 B.R. 863, 868 (9th Cir. BAP 2012) (citing In re Lund,
21 202 B.R. at 130).

22 The Minutes satisfy all of these requirements.

23 First, the Minutes are framed as an order. The court
24 stated:

25 IT IS ORDERED MS. NEUMAN SHALL HAVE UNTIL OCTOBER 17,
26 2014 TO FILE A CLAIM AGAINST MR. KRENZ; FAILING WHICH
THE CLAIM WILL BE CONSIDERED A LATE FILED CLAIM.

27 IT IS FURTHER ORDERED OVERRULING THE OBJECTION TO THE
28 AMENDED SCHEDULES FILED BY MS. NEUMAN.

1 This language disposes of the objection under § 523(a)(3) and
2 “clearly evidence[s] the bankruptcy judge’s intention that it be
3 the court’s final act in the matter.” See In re Hamlin, 465 B.R.
4 at 868.

5 Second, Ms. Neuman does not deny that she received a copy of
6 the Minutes.

7 Third, an electronically filed document by the court does
8 not need to contain the judge’s or clerk’s signature to be
9 official and binding. See Local Rule 5005-2(j) (“Any order or
10 other court-issued document filed electronically without the
11 original signature of a judge or clerk has the same force and
12 effect as if the judge or clerk had signed a paper copy of such
13 order or other court-issued document and it had been entered on
14 the docket nonelectronically.”).

15 Finally, the Minutes were entered on the bankruptcy court’s
16 docket.

17 Accordingly, Ms. Neuman’s appeal of the court’s
18 September 25, 2014 ruling is untimely and not properly before us
19 on appeal.

20 **2. The court did not violate Ms. Neuman’s due process**
21 **rights when it denied her objection to Mr. Krenz’s**
22 **amendment.**

22 Even if Ms. Neuman’s appeal was timely, we would affirm the
23 Minutes.

24 **a. Due process requires notice and an opportunity to**
25 **be heard.**

26 Generally speaking, a court must give sufficient notice of a
27 pending proceeding and the opportunity for interested parties to
28 be heard. See Tennant v. Rojas (In re Tennant), 318 B.R. 860,

1 870 (9th Cir. BAP 2004) ("the concept of procedural due process
2 requires a notice and an opportunity to be heard"). According to
3 the United States Supreme Court:

4 An elementary and fundamental requirement of due
5 process in any proceeding which is to be accorded
6 finality is notice reasonably calculated, under all the
7 circumstances, to apprise interested parties of the
8 pendency of the action and to afford them an
9 opportunity to present their objections. The notice
must be of such nature as reasonably to convey the
required information . . . and it must afford a
reasonable time for those interested to make their
appearance.

10 Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950)
11 (citations omitted).

12 "[T]he concept of notice and a hearing is flexible and
13 depends on what is appropriate in the particular circumstance."
14 In re Tennant, 318 B.R. at 870 (citing Great Pac. Money Markets,
15 Inc. v. Krueger (In re Krueger), 88 B.R. 238, 241 (9th Cir. BAP
16 1988)). For example, a procedure may be "perfectly appropriate"
17 if it "notifies the debtor of the deficiencies of his petition
18 and dismisses the case sua sponte without further notice and a
19 hearing when the debtor fails to file the required forms within a
20 deadline." Id. at 870-71 (citing Minkes v. LaBarge
21 (In re Minkes), 237 B.R. 476, 478-79 (8th Cir. BAP 1999)).

22 **b. Ms. Neuman received both notice and an opportunity**
23 **to be heard.**

24 In the present case, Ms. Neuman admitted that she had actual
25 notice of Mr. Krenz's bankruptcy when he filed his petition in
26 2010. As a creditor, she was obligated to file a claim and
27 protect her rights when she learned of Mr. Krenz's bankruptcy.
28 See Lompa v. Price (In re Price), 79 B.R. 888, 893 (9th Cir. BAP

1 1987) (holding "that actual notice of the bankruptcy proceeding
2 is sufficient to place a creditor on inquiry notice of the
3 running of the bar date and satisfies due process requirements"),
4 aff'd, 871 F.2d 97 (9th Cir. 1989) ("In light of our
5 determination that the appellant was on notice that Price had
6 filed for bankruptcy relief, the appellant's due process argument
7 is without merit."); § 523(a)(3) (unscheduled debts are
8 nondischargeable, "unless such creditor had notice or actual
9 knowledge of the case in time for such timely filing"). The
10 court did not deny her due process when she knew of Mr. Krenz's
11 bankruptcy and took no action to assert her own rights.

12 Ms. Neuman attempted to explain her inaction by arguing that
13 she thought that the bankruptcy proceeding only concerned
14 Mr. Krenz's business dealings. This assumption was unwarranted
15 and does not relieve her of her obligation to ascertain the
16 effect of the bankruptcy case on her rights.

17 Despite Ms. Neuman's inaction, the bankruptcy court
18 accommodated each of her late requests for relief and ensured
19 that she was heard regarding both her objection to the amendment
20 and her objection to discharge. The court bent over backwards to
21 ensure that her procedural and due process rights were protected.
22 Accordingly, Ms. Neuman was not denied due process.

23 **c. Ms. Neuman fails to demonstrate any prejudice**
24 **arising from the alleged due process violation.**

25 Furthermore, even if Ms. Neuman was denied due process
26 (which she was not), she does not explain how she was prejudiced.

27 Even in cases where a bankruptcy court errs by failing to
28 provide adequate notice and hearing, the appellant must show

1 prejudice from the procedural deficiencies. See Rosson v.
2 Fitzgerald (In re Rosson), 545 F.3d 764, 776-77 (9th Cir. 2008)
3 (“Because there is no reason to think that, given appropriate
4 notice and a hearing, Rosson would have said anything that could
5 have made a difference, Rosson was not prejudiced by any
6 procedural deficiency.”). In Rosson, the Ninth Circuit held that
7 the debtor was deprived of a meaningful opportunity to be heard;
8 nevertheless, because he could “show no prejudice arising from
9 the defective process afforded him[,]” the bankruptcy court
10 properly converted the case to chapter 7. Id.; see City Equities
11 Anaheim, Ltd. v. Lincoln Plaza Dev. Co. (In re City Equities
12 Anaheim, Ltd.), 22 F.3d 954, 959 (9th Cir. 1994) (rejecting a due
13 process claim for lack of prejudice where the debtor could not
14 show that any different or additional argument would have been
15 presented if the bankruptcy court had timely approved the
16 petition for new counsel).

17 Here, Ms. Neuman has not articulated what she could have
18 said or done that would have changed the outcome if she had
19 gotten timely, formal notice of the bankruptcy filing. She was
20 not deprived of the right to file a timely proof of claim; in the
21 Minutes, the court extended the time for her to file a claim, and
22 she filed a claim by that date. She might have objected to the
23 confirmation of Mr. Krenz’s plan, but she has not stated any
24 argument that might have defeated the confirmation of the plan.
25 She might have objected to Mr. Krenz’s discharge earlier, but the
26 bankruptcy court thoroughly and carefully considered her
27 objections at a later date; there is no reason to believe that
28 the outcome would have been different if she had objected

1 earlier. In other words, we fail to see how Ms. Neuman "would
2 have said anything that could have made a difference." See
3 In re Rosson, 545 F.3d at 777.

4 Moreover, Ms. Neuman actually **benefitted** from Mr. Krenz's
5 failure to include the loan obligation in his schedules. While
6 non-priority unsecured creditors (including Ms. Neuman) received
7 only a 1.65 percent disbursement under the plan, Ms. Neuman
8 actually received much more. From the time Mr. Krenz filed
9 bankruptcy in February 2010 until the date he stopped paying
10 Ms. Neuman in January 2014, he paid her approximately \$28,800.
11 This is far more than the pro rata share received by any other
12 unsecured creditor. Thus, Ms. Neuman actually received more than
13 she would have had she been included as a creditor from the
14 inception of the bankruptcy.

15 We therefore hold that the court did not deny Ms. Neuman due
16 process when it permitted Mr. Krenz to amend his schedules and
17 allowed Ms. Neuman to file her proof of claim.

18 **B. The bankruptcy court did not err in granting a judgment on**
19 **partial findings in favor of Mr. Krenz on Ms. Neuman's**
20 **objection to discharge.**

21 Ms. Neuman next argues that the bankruptcy court erred when
22 it overruled her objection to discharge based on Mr. Krenz's
23 alleged fraud and manipulation. However, her failure to provide
24 us with a full transcript of the Evidentiary Hearing precludes
25 our informed review of the alleged error.

26 It is Ms. Neuman's duty to provide the Panel with a complete
27 record on appeal. See Welther v. Donell (In re Oakmore Ranch
28 Mgmt.), 337 B.R. 222, 226 (9th Cir. BAP 2006) (the appellant
"bears the burden of presenting a complete record"). "The

1 settled rule on transcripts in particular is that failure to
2 provide a sufficient transcript may, but need not, result in
3 dismissal or summary affirmance and that the appellate court has
4 discretion to disregard the defect and decide the appeal on the
5 merits." Kyle v. Dye (In re Kyle), 317 B.R. 390, 393 (9th Cir.
6 BAP 2004), aff'd, 170 F. App'x 457 (9th Cir. 2006). But see
7 Ehrenberg v. Cal. State Univ. (In re Beachport Entm't), 396 F.3d
8 1083, 1087 (9th Cir. 2005) ("Although summary dismissal is within
9 the BAP's discretion, it 'should first consider whether informed
10 review is possible in light of what record has been provided.'").

11 Ms. Neuman has provided us with only a partial transcript of
12 the Evidentiary Hearing, which includes only the court's ruling
13 **after** the parties had presented their evidence. Without a full
14 transcript of the Evidentiary Hearing, we cannot review the
15 evidence and argument presented by the parties during the
16 Evidentiary Hearing;⁴ we therefore do not find any error with the
17 court's ruling.

18 CONCLUSION

19 For the reasons set forth above, we AFFIRM the bankruptcy
20 court's decisions to allow Mr. Krenz to amend his schedules,
21 permit Ms. Neuman to file a late proof of claim, and deny
22 Ms. Neuman's objection to discharge.

26 ⁴ Similarly, Ms. Neuman included in her excerpts of record a
27 number of purported exhibits. However, it is unclear whether
28 these documents were actually offered and admitted into evidence
at the Evidentiary Hearing.