

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NOT FOR PUBLICATION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

In re: ) BAP No. AZ-15-1425-FLJu  
 )  
 6 FRANCES DIANE TOTH, ) Bk. No. 14-18264-DPC  
 )  
 7 Debtor. )  
 )  
 8 \_\_\_\_\_ )  
 )  
 9 FRANCES DIANE TOTH, )  
 )  
 10 Appellant, )  
 )  
 11 v. ) **MEMORANDUM\***  
 )  
 12 TROY SHORT; WILLIAM E. PIERCE, )  
 13 Trustee, )  
 )  
 14 Appellees.\*\* )  
 )

Argued and Submitted on September 23, 2016  
at Phoenix, Arizona

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 Frances Diane Toth argued pro se; David  
Smith Chipman of Chipman Glasser, LLC argued on  
behalf of Appellee Troy Short.

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.

\*\* Appellee William E. Pierce did not file an answering  
brief or otherwise participate in this appeal.

1 **INTRODUCTION**

2 Faced with the prospect of losing her home, appellant  
3 Frances Diane Toth complains that the mistakes and incompetence  
4 of her bankruptcy counsel denied her counsel and the effective  
5 assistance of counsel, the right to a fair trial, and due  
6 process. She appeals the bankruptcy court's rulings denying  
7 conversion of her chapter 7<sup>1</sup> bankruptcy case to chapter 13,  
8 disapproving a compromise between chapter 7 trustee William E.  
9 Pierce ("Trustee") and appellee Troy Allen Short, and ordering  
10 the Trustee to market and sell her house.

11 Ms. Toth deserves our sympathy. Mr. Short abused Ms. Toth  
12 during their stormy relationship. In the litigation that ensued,  
13 Ms. Toth did not fare well, mostly because of her unfortunate  
14 decision to stop participating in that litigation at a critical  
15 juncture. But this appeal concerns only two orders of the  
16 bankruptcy court, and those orders only addressed a small part of  
17 the dispute between Ms. Toth and Mr. Short. Ms. Toth has not  
18 convinced us that either of those orders is erroneous.  
19 Accordingly, we AFFIRM.

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<sup>1</sup> Unless specified otherwise, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all  
28 "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037, and all "Civil Rule" references are  
to the Federal Rules of Civil Procedure, Rules 1-86.

1 **FACTUAL BACKGROUND<sup>2</sup>**

2 **A. The Colorado civil actions and judgment against Ms. Toth**

3 Ms. Toth and Mr. Short lived together in Denver, Colorado  
4 for approximately two and a half years. During the course of  
5 their relationship, they were involved in numerous domestic  
6 disputes, some of which gave rise to mutual accusations of  
7 threats and physical abuse.

8 The relationship ended in 2011 amid escalating tensions.  
9 Each sought restraining orders against the other, and the parties  
10 filed competing civil complaints against each other. In April  
11 2011, a Colorado state court entered a permanent civil  
12 restraining order against Mr. Short and denied Mr. Short's  
13 request for restraining orders against Ms. Toth and certain of  
14 her family members and acquaintances. The parties also mediated  
15 and settled their original competing civil lawsuits against each  
16 other.

17 Thereafter, Ms. Toth left Colorado to live in Arizona in a  
18 home that she owned from her previous marriage (the "Arizona  
19 Property"). She claimed that she kept the Colorado court updated  
20 as to her Arizona address.

21 The parties made reciprocal claims of harassment based on  
22 multiple lawsuits filed in various jurisdictions. (Both claimed  
23 that, as a result, they had to play "whack-a-mole.") Ms. Toth  
24 (and her brother) filed multiple small claims lawsuits against  
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26 <sup>2</sup> Ms. Toth presents us with an incomplete record on appeal.  
27 We have exercised our discretion to review the bankruptcy court's  
28 docket, as appropriate. See Woods & Erickson, LLP v. Leonard  
(In re AVI, Inc.), 389 B.R. 721, 725 n.2 (9th Cir. BAP 2008).

1 Mr. Short in Denver County, Colorado, Chaffee County, Colorado,  
2 and Mohave County, Arizona. These actions were consolidated into  
3 a single lawsuit in Chaffee County, Colorado.

4 Mr. Short filed counterclaims against Ms. Toth and her  
5 brother for abuse of the legal process, defamation, interference  
6 with prospective business advantage, and civil conspiracy. The  
7 Colorado court scheduled a hearing to address a variety of  
8 pending motions. It directed that, based on Ms. Toth's "prior  
9 failure to comply with Court orders and the failure to resolve  
10 certain matters via telephonic hearings," all parties needed to  
11 be present in person. However, Ms. Toth failed to appear in  
12 person at the hearing. The court granted Ms. Toth a continuance  
13 on the condition that she pay Mr. Short's attorneys' fees and  
14 costs incurred as a result of the hearing; the court warned that,  
15 if Ms. Toth did not make such payment, it would enter default  
16 judgment against her as to both her claims against Mr. Short and  
17 Mr. Short's counterclaims against her.

18 When Ms. Toth failed to pay Mr. Short's attorneys' fees and  
19 costs, Mr. Short moved for default. The Colorado court held that  
20 Ms. Toth had "demonstrated willful and deliberate disregard of  
21 [the] Court's orders and [her] obligations as a litigant under  
22 the applicable rules." The court therefore entered default  
23 against Ms. Toth.

24 The Colorado court scheduled an evidentiary hearing to  
25 determine Mr. Short's damages. The day prior to the hearing, the  
26 court received a letter from Ms. Toth wherein she recapitulated  
27 her claims against Mr. Short and indicated that she would not  
28 appear at the hearing. She stated that she has "no qualms about

1 filing bankruptcy against any judgment that is in his favor."  
2 She told the judge that Mr. Short "is a true piece of s\*\*t and I  
3 am scraping him off my shoe. I am throwing my hands in the air,  
4 your honor, as I have no other options."

5 The Colorado court held the evidentiary hearing the  
6 following day. The court adopted the facts as alleged in  
7 Mr. Short's counterclaim and stated that Mr. Short had satisfied  
8 each element of his claims. The court awarded Mr. Short \$133,500  
9 in lost income and \$57,134.80 in attorneys' fees ("Colorado  
10 Judgment"). Ms. Toth claims she was not properly served with the  
11 judgment; she did not appeal or seek relief from the judgment in  
12 the Colorado state courts.

13 Mr. Short then domesticated the Colorado Judgment in  
14 Arizona and recorded a judgment lien on the Arizona Property. In  
15 December 2014, Mr. Short apparently seized the Arizona Property.  
16 Ms. Toth claimed that she did not receive notice of the  
17 domestication proceedings or the judgment lien until days after  
18 the seizure. Mr. Short proceeded to obtain a writ of execution  
19 against the Arizona Property.

20 **B. Ms. Toth's chapter 7 bankruptcy**

21 On December 15, 2014, Ms. Toth filed her chapter 7  
22 bankruptcy petition. She had retained attorney Dale Stoker to  
23 represent her in the bankruptcy proceedings.

24 Ms. Toth filed a motion ("Motion to Avoid Lien") to avoid  
25 Mr. Short's judicial lien on the Arizona Property under § 522(f).  
26 She asserted that the lien impaired exemptions to which she would  
27 be entitled under § 522(b).

28 Mr. Short objected to Ms. Toth's claimed homestead exemption

1 on the Arizona Property. He argued that the Arizona Property was  
2 not Ms. Toth's primary residence, since she had represented to  
3 the Colorado court that she resided in California.

4 Concurrently, Mr. Short filed an adversary complaint against  
5 Ms. Toth to determine nondischargeability of the judgment debt  
6 pursuant to § 523(a)(6). He claimed, among other things, that  
7 Ms. Toth harassed him and abused the legal process by "filing  
8 multiple baseless and vexatious small claims lawsuits against  
9 Short, one after another, in multiple jurisdictions, with the  
10 intent of obtaining as many default judgments as possible and to  
11 damage, as much as possible, Short's reputation in his  
12 community."<sup>3</sup>

13 While the issues concerning the judgment lien and  
14 nondischargeability complaint were pending, Ms. Toth received her  
15 discharge on April 6, 2015.

16 **1. The motion to compromise and the motion to set aside**

17 On June 30, 2015, the Trustee filed a motion to approve a  
18 compromise with Mr. Short ("Motion to Compromise"). Noting that  
19 there was no unencumbered value in the Arizona Property for the  
20 bankruptcy estate, the Trustee proposed that Mr. Short be allowed  
21 to market the Arizona Property for sale and decide which offer to  
22 accept, subject to court approval.

23 Ms. Toth initially filed a response approving of the  
24 proposed compromise, provided that Mr. Short not be allowed on or

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26 <sup>3</sup> On February 18, 2016 (after the commencement of this  
27 appeal), the bankruptcy court entered its nondischargeability  
28 judgment in favor of Mr. Short. Ms. Toth also appealed that  
judgment to the BAP (BAP No. AZ-16-1052), but that appeal is not  
before the Panel at this time.

1 near the Arizona Property. Shortly thereafter, Ms. Toth, through  
2 her counsel, withdrew her approval. Instead, she stated that she  
3 objected to the compromise. She also stated that she had reached  
4 an agreement with the Trustee, whereby the value of the Arizona  
5 Property was to be set by an appraisal; if the appraisal exceeded  
6 the total of the statutorily exempt amount, the first lien deed  
7 of trust, and the costs of sale, then Ms. Toth would be allowed  
8 to pay the difference and retain the Arizona Property. She  
9 claimed that the "agreement" was memorialized in an e-mail.  
10 Based on the appraised value of \$275,000, Ms. Toth calculated  
11 that the amount due to the Trustee under her proposal would be  
12 \$22,500.<sup>4</sup>

13 Ms. Toth's position suffered from a fatal flaw: the Trustee  
14 did not agree to her offer. Rather, he stated that the  
15 bankruptcy court needed to resolve first the objection to the  
16 homestead exemption. Until this question was answered, one could  
17 not determine how much Ms. Toth would have to pay.

18 The next day, Ms. Toth filed pro se a combined opposition to  
19 the Motion to Compromise and a motion to set aside Mr. Short's  
20 default judgment ("Motion to Set Aside"). Ms. Toth restated her  
21 arguments against Mr. Short regarding their prior legal battles  
22 in Colorado. As to the Motion to Compromise, she argued that the  
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24 <sup>4</sup> Ms. Toth's calculations were as follows:

25	Appraisal:	\$275,000
26	Less mortgage of:	\$75,000
	Less exemption:	\$150,000
27	<u>Less realtor/closing:</u>	<u>\$27,500</u>
28	Resulting net to Trustee:	\$22,500

1 restraining order against Mr. Short prevented the bankruptcy  
2 court from approving the Motion to Compromise, since it  
3 constituted harassment and would allow Mr. Short "to manipulate a  
4 third party to control and interface with the Protected Person  
5 and her domicile."

6 As to the Motion to Set Aside the Colorado Judgment,  
7 Ms. Toth argued that Mr. Short failed to perfect service upon  
8 her, since all documents were sent to her California address.  
9 She also argued that Mr. Short perpetrated fraud upon the court  
10 by making misleading statements.

11 At a hearing on September 9, 2015, the bankruptcy court  
12 heard a number of motions, including the Motion to Compromise and  
13 the Motion to Set Aside. The court orally denied both motions.  
14 A minute order entered the same day states that the Motion to  
15 Compromise is denied. As far as we can tell, no written order  
16 denying the Motion to Set Aside was ever entered.<sup>5</sup>

17 Although the record does not make it entirely clear, there  
18 is some indication that the court denied the Motion to Compromise  
19 due to Mr. Short's pending objection to the homestead exemption.  
20 Shortly thereafter, Mr. Short withdrew his objection to  
21 Ms. Toth's claim of a homestead exemption.

## 22 **2. The motion to convert**

23 On November 3, 2015, Ms. Toth filed a motion to convert her  
24 chapter 7 case to chapter 13 ("Motion to Convert"). She later  
25 argued that she was unaware that, by filing for bankruptcy under

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27 <sup>5</sup> The minutes note that the Motion to Set Aside was on  
28 calendar for the September 9 hearing, but do not include the  
disposition of that motion.

1 chapter 7, there was a chance that she may lose the Arizona  
2 Property. She claimed that Mr. Stoker was unfamiliar with the  
3 applicable law and blamed him for providing faulty advice. The  
4 Motion to Convert was set for hearing on December 1, 2015.

5 Mr. Short opposed the Motion to Convert, arguing that  
6 Ms. Toth sought conversion in bad faith. He asserted that  
7 Ms. Toth had sworn to harm Mr. Short through the bankruptcy  
8 process and that the motion was "not a good faith or bona fide  
9 effort to pay debt."

### 10 **3. The renewed motion to compromise**

11 Shortly after Mr. Short withdrew his objection to the  
12 homestead exemption, the Trustee filed a renewed motion to  
13 approve the compromise with Mr. Short ("Renewed Motion to  
14 Compromise"). Ms. Toth opposed the Renewed Motion to Compromise  
15 for the same reasons she opposed the initial motion. The Renewed  
16 Motion to Compromise was also set for hearing on December 1,  
17 2015.

### 18 **4. The motion to withdraw**

19 During this time, Ms. Toth's relationship with her attorney,  
20 Mr. Stoker, deteriorated. She claimed that he was not  
21 responsive, did not file the documents she wanted, did not make  
22 the arguments that she requested, and did not seek the discovery  
23 that she demanded. She had separate counsel in the adversary  
24 proceeding who was willing to take over the bankruptcy case, but  
25 only if the court granted the Motion to Convert.

26 On November 19, Mr. Stoker requested leave to withdraw as  
27 Ms. Toth's counsel ("Motion to Withdraw") due to an "irremediable  
28 breakdown in the attorney-client relationship." He stated that

1 Ms. Toth had "been notified in writing of the status of the case  
2 by providing a copy of this motion" and that he also advised her  
3 of the December 1 hearing on the Motion to Convert and Renewed  
4 Motion to Compromise. The bankruptcy court granted the  
5 withdrawal by order dated November 20.

6 **5. The December 1, 2015 hearing**

7 At the December 1 hearing on the Motion to Convert and  
8 Renewed Motion to Compromise, Ms. Toth claimed that she was  
9 unaware that Mr. Stoker had withdrawn as her counsel and would  
10 not argue at the hearing. She admitted that Mr. Stoker might  
11 have mailed a copy of the documents to her but that she had not  
12 been checking her mail. The bankruptcy court did not find her  
13 excuses credible.

14 Ms. Toth asked the court to continue the hearing for sixty  
15 days to allow her to obtain new counsel. The court did not agree  
16 to continue the hearing, but rather asked Ms. Toth to explain her  
17 position and arguments to the court.

18 Ms. Toth stated that she was eligible as a chapter 13  
19 debtor. She argued again that she had not been served properly  
20 in the Colorado and domestication proceedings. She also blamed  
21 Mr. Stoker for advising her to file for chapter 7. She said that  
22 "Mr. Stoker has explained to me he doesn't understand Chapter 13  
23 that well so he wanted me to file a Chapter 7 because that's what  
24 he does."

25 Ms. Toth also argued that Mr. Short committed fraud on the  
26 court by making false statements. She contended that she did not  
27 act in bad faith and was adversely affected by Mr. Short's  
28 actions.



1 Amendment, the right to a fair trial, or due process.

2 **STANDARDS OF REVIEW**

3 We review the bankruptcy court's conclusions of law de novo  
4 and its findings of fact for clear error. Hansen v. Moore  
5 (In re Hansen), 368 B.R. 868, 874 (9th Cir. BAP 2007). "De novo  
6 review requires that we consider a matter anew, as if no decision  
7 had been made previously." Francis v. Wallace (In re Francis),  
8 505 B.R. 914, 917 (9th Cir. BAP 2014) (citation omitted). A  
9 bankruptcy court clearly errs if its findings were illogical,  
10 implausible, or "without support in inferences that may be drawn  
11 from the facts in the record." United States v. Hinkson,  
12 585 F.3d 1247, 1262-63 & n.21 (9th Cir. 2009) (en banc).

13 **DISCUSSION**

14 **A. The scope of this appeal is limited.**

15 It is unclear whether Ms. Toth is appealing only the court's  
16 ruling on the Renewed Motion to Compromise, or both the Renewed  
17 Motion to Compromise and the Motion to Convert. Her notice of  
18 appeal states that she is appealing the bankruptcy court's  
19 "MINUTE ENTRY entered in this action On DECEMBER 3, 2015." She  
20 attached a copy of the minutes of the hearing on the Renewed  
21 Motion to Compromise. She did not reference or attach the minute  
22 entry on the Motion to Convert. Her opening brief does not  
23 provide any definitive answer.

24 Ordinarily, we would only consider Ms. Toth's arguments  
25 concerning the Renewed Motion to Compromise because that is the  
26 only order mentioned in and attached to the notice of appeal.  
27 Nevertheless, because Ms. Toth is proceeding pro se, her opening  
28 brief makes occasional reference to issues concerning the Motion

1 to Convert, and Mr. Short has not raised an issue regarding the  
2 scope of appeal, we construe her appeal as encompassing the  
3 denial of her Motion to Convert, as well.

4 Although we can adopt a generous interpretation of  
5 Ms. Toth's notice of appeal, we lack jurisdiction to consider  
6 issues that the orders on appeal do not decide. Ms. Toth argues  
7 at length about errors in the Colorado state court and the  
8 Arizona domestication proceedings. But the orders on appeal do  
9 not pertain to those questions (which were previously addressed  
10 in her Motion to Set Aside). Therefore, we cannot consider her  
11 challenge to the Colorado Judgment or the Arizona domestication  
12 of that judgment or her argument that she was denied due process  
13 with respect to either of these proceedings.

14 **B. The scope of Ms. Toth's arguments is also limited.**

15 We also note that Ms. Toth's appellate briefs do not argue  
16 that the bankruptcy court failed to apply correctly the  
17 established standard for approval of a compromise, see, e.g.,  
18 Goodwin v. Mickey Thompson Entm't Grp., Inc. (In re Mickey  
19 Thompson Entm't Grp., Inc.), 292 B.R. 415, 420 (9th Cir. BAP  
20 2003); Rule 9019, or the statutory standard for conversion from  
21 chapter 7 to chapter 13, see, e.g., § 706(a).

22 Rather, Ms. Toth argues that we should reverse both orders  
23 for the same reasons, including denial of counsel, ineffective  
24 assistance of counsel, denial of the right to a fair trial, and  
25 denial of due process. Because none of these arguments is  
26 specific to either of the two orders on appeal, we will consider  
27 them in general terms.

1 **C. The alleged ineffectiveness of Ms. Toth's counsel would not**  
2 **warrant reversal.**

3 Ms. Toth largely bases her appeal on Mr. Stoker's supposed  
4 errors. She argues at length that he erroneously advised her to  
5 file a chapter 7 petition, rather than chapter 13; withdrew as  
6 counsel a week before the December 1 hearing; did not appear at  
7 the hearing; did not provide the court with certain evidence; and  
8 did not conduct discovery. In summary, she contends that we  
9 should reverse the court's rulings because she did not have  
10 effective counsel.

11 Ms. Toth's arguments are unavailing. Her position rests on  
12 a false premise: that she has a constitutional right to counsel  
13 and the effective assistance of counsel under the Sixth  
14 Amendment. However, the right to counsel does not apply to  
15 bankruptcy proceedings. She cites no authority to the contrary.

16 It is well settled that parties to a bankruptcy proceeding  
17 do not have a constitutional right to counsel. See Hedges v.  
18 Resolution Tr. Corp., 32 F.3d 1360, 1363 (9th Cir. 1994) ("there  
19 is no absolute right to counsel in civil proceedings"). "There  
20 is no constitutional right to counsel in a legal proceeding  
21 unless it is criminal or quasi-criminal in nature." Davis v.  
22 Cent. Bank (In re Davis), 23 B.R. 773, 776 (9th Cir. BAP 1982);  
23 see U.S. Const. amend. VI (applicable to "all criminal  
24 proceedings"); Cutter v. Seror (In re Cutter), 468 F. App'x 657,  
25 658 (9th Cir. 2011) (rejecting claim of right to counsel in  
26 bankruptcy proceedings, noting that "the Sixth Amendment by its  
27 own terms applies only to criminal prosecutions").

28 Consequently, the mistakes or incompetence of counsel in a

1 bankruptcy case cannot amount to a violation of constitutional  
2 rights. See Yu v. Nautilus, Inc. (In re Yu), BAP No. CC-16-1045-  
3 KuFD, 2016 WL 4261655, at \*7 (9th Cir. BAP Aug. 11, 2016)  
4 (rejecting the debtor's argument that she suffered ineffective  
5 assistance of counsel, because "[t]here is no guaranteed right to  
6 counsel in civil or bankruptcy proceedings - effective or  
7 otherwise"); see also Shepard v. Conklin (In re Shepard), BAP No.  
8 EC-09-1096-DJuBa, 2009 WL 7809003, at \*8 (9th Cir. BAP Nov. 24,  
9 2009) ("A 'full and fair opportunity to litigate' simply means  
10 that the debtor had a reasonable chance to appear in court and  
11 contest the factual and legal issues raised in the state court  
12 action, not that the debtor should have equal footing from a  
13 tactical standpoint.").

14 Ms. Toth cites Turner v. Rogers, 564 U.S. 431 (2011), for  
15 the proposition that due process requires the court to provide  
16 counsel in certain civil cases. However, the passage she quotes  
17 in the reply brief is not found in the Supreme Court decision.  
18 Moreover, Turner only considered "an indigent's right to paid  
19 counsel at such a [civil] contempt proceeding[,]" id. at 444, not  
20 whether a bankruptcy debtor has a right to counsel. The court  
21 ultimately held that "the Due Process Clause does not  
22 automatically require the provision of counsel at civil contempt  
23 proceedings to an indigent individual who is subject to a child  
24 support order, even if that individual faces incarceration (for  
25 up to a year)." Id. at 448. As such, Turner does not aid  
26 Ms. Toth's argument.

27 In an attempt to make sense of Ms. Toth's Sixth Amendment  
28 argument, Mr. Short charitably frames it as an argument

1 concerning the court's discretion to continue the hearing to  
2 allow for a substitution of counsel. Inexplicably, Ms. Toth  
3 rejects this characterization in her reply brief, making clear  
4 that the asserted error concerns only her purported  
5 constitutional right to the effective assistance of counsel, not  
6 the court's denial of a continuance to allow her to obtain  
7 counsel. As such, our review is limited to whether the court  
8 deprived her of this constitutional right, and we do not consider  
9 whether the court erred in refusing to continue the hearing.

10 Ms. Toth argues in passing that relief from the court's  
11 order was justified under Civil Rule 60, because she was  
12 surprised that she had to argue at the December 1 hearing.  
13 However, she never moved the bankruptcy court for relief under  
14 Civil Rule 60. We will not consider arguments raised for the  
15 first time on appeal. See Ezra v. Seror (In re Ezra), 537 B.R.  
16 924, 932 (9th Cir. BAP 2015) ("Ordinarily, federal appellate  
17 courts will not consider issues not properly raised in the trial  
18 courts.").

19 Accordingly, we discern no error concerning Ms. Toth's  
20 alleged right to counsel or right to effective assistance of  
21 counsel.

22 **D. The bankruptcy court did not deny Ms. Toth a fair trial.**

23 Ms. Toth groups a number of alleged errors under the  
24 umbrella of the denial of a right to a fair trial. Essentially,  
25 she argues that the court erred in denying the Renewed Motion to  
26 Compromise, granting alternative relief, and accepting the facts  
27 presented by Mr. Short in the Colorado state court proceedings.  
28 None of these arguments is persuasive.

1           **1. The bankruptcy court did not err in rejecting the**  
2           **proposed compromise and granting alternative relief.**

3           Ms. Toth's primary argument is that the court erred in  
4           granting alternative relief rather than approving the proposed  
5           compromise with Mr. Short. She contends that the court changed  
6           the agreement that was proposed in the Renewed Motion to  
7           Compromise and that, in doing so, the court denied her a fair  
8           trial. We discern no error.

9           In the first place, we do not understand why Ms. Toth  
10          objects to the court's disapproval of the compromise, because  
11          that is exactly what she asked the court to do.<sup>6</sup> Ms. Toth's  
12          opposition to the Motion to Compromise requested that Mr. Short  
13          not be allowed to handle the sale and asked that a realtor market  
14          and sell the Arizona Property. The court essentially granted her  
15          request and ordered the Trustee, not Mr. Short, to handle the  
16          sale of the Arizona Property. It also provided that, if the  
17          Trustee could not sell the Arizona Property within six months, he  
18          would abandon the Arizona Property. Thus, the terms of the  
19          approved compromise were more favorable to Ms. Toth than those of  
20          the proposed compromise.

21          In the second place, Ms. Toth does not explain why she  
22          thinks that the court erred when it granted alternative relief.  
23          In fact, that ruling was partly favorable to her, because it gave  
24          the Trustee only six months to sell the Arizona Property and

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26          <sup>6</sup> Even Ms. Toth recognized in her appellate brief that the  
27          court approved alternative relief in consideration of her  
28          objection: "Further that exact language [in the court's ruling on  
the Renewed Motion to Compromise] is what APPELLANT used to  
submit an objection to the Motion."

1 provided that the Arizona Property would be abandoned to her if  
2 the Trustee did not get an adequate offer during that period.

3 Ms. Toth also argues that the court treated her unfairly  
4 when it changed the terms of the compromise in its written  
5 ruling, rather than at the December 1 hearing, thereby depriving  
6 her of an opportunity to contest the ruling. This argument  
7 misrepresents what happened. The court orally explained its  
8 ruling at the December 1 hearing at least three times directly to  
9 Ms. Toth. She had an opportunity to respond to the alternative  
10 relief and did so at length. The court bent over backwards to  
11 explain its ruling to her and allow her to argue.

12 Ms. Toth alternatively argues that the court should have  
13 approved the "compromise" reached by herself and the Trustee,  
14 whereby she would pay \$22,000 to her estate and retain the  
15 Arizona Property. However, there is no indication in the record  
16 that the Trustee agreed to this compromise.<sup>7</sup> We thus decline to  
17 enforce Ms. Toth's supposed compromise for \$22,000.

18 **2. Ms. Toth does not establish any evidentiary error.**

19 Ms. Toth argues in passing that she "was not allowed to  
20 examine documents handed into the court and was given no access  
21 to the same." However, she does not specify what documents were  
22 handed to the court or when. We will not review arguments on  
23 appeal that are not distinctly argued or supported by the record.  
24 See Christian Legal Soc. Chapter of Univ. of Cal. v. Wu, 626 F.3d

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25  
26 <sup>7</sup> Ms. Toth admitted at the December 1 hearing that there was  
27 no agreement to settle for \$22,000: "The deal is and the deal  
28 that was settled back in February was that they take the \$22,000  
or the \$20,000 to settle this case and **they said that's not  
enough for us.**" (Emphasis added.)

1 483, 487 (9th Cir. 2010) (An appellate court “won’t consider  
2 matters on appeal that are not specifically and distinctly argued  
3 in appellant’s opening brief. Applying this standard, we’ve  
4 refused to address claims that were only argue[d] in passing, or  
5 that were bare assertion[s] . . . with no supporting argument.”).

6 Similarly, she argues that the court did not consider  
7 evidence that she presented. Again, she does not identify what  
8 evidence the court allegedly ignored, so we will not review this  
9 issue on appeal.<sup>8</sup> See id.

10 **3. Ms. Toth does not establish any fraud upon the court.**

11 Ms. Toth also argues that the Colorado Judgment was wrong  
12 due to Mr. Short’s alleged fraud and that the bankruptcy court  
13 should not have accepted the facts therein. However, as we have  
14 stated above, the Colorado Judgment is beyond the scope of this  
15 appeal. We therefore cannot review Ms. Toth’s arguments that  
16 Mr. Short made false statements and committed fraud upon the  
17 court.

18 **E. The Panel denies Ms. Toth’s request to strike Mr. Short’s**  
19 **excerpts of record and will only consider her disputed**  
20 **documents for background reference.**

21 Finally, the parties have made competing requests to strike  
22 portions of the other’s excerpts of record.

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23 <sup>8</sup> In her reply brief, Ms. Toth argues that the  
24 correspondence between herself and Mr. Stoker showed that her  
25 attorney abandoned her, and if the court “was afforded review of  
26 these attorney-client privileged documents during the hearing of  
27 December 1, 2015, the court would have evidence proving that  
28 Stoker was deficient, recklessly abandoned client [sic], caused  
undue hardship on APPELLANT and the court.” In other words, she  
admits that these documents were not properly before the court  
and that the court could not have considered them in rendering  
its decision.

1 Mr. Short notes that Ms. Toth's excerpts of record are "full  
2 of documents that were not filed in the Chapter 7 bankruptcy or  
3 the adversary proceeding." He points to thirty documents that  
4 were not filed with the bankruptcy court.

5 In response, Ms. Toth concedes that at least a few of those  
6 documents were not before the court, because had the court seen  
7 those documents, it would have found in her favor.

8 Except to aid in our understanding of the relevant factual  
9 background and procedural history of this case, we will not  
10 consider the thirty documents identified by Mr. Short. As far as  
11 we can tell, these documents were not presented to the bankruptcy  
12 court. See Graves v. Myrvang (In re Myrvang), 232 F.3d 1116,  
13 1119 n.1 (9th Cir. 2000) (except in rare cases where "the  
14 interests of justice demand it," an appellate court will not  
15 consider evidence not presented to the trial court"); Kirshner v.  
16 Uniden Corp. of Am., 842 F.2d 1074, 1077 (9th Cir. 1988) (an  
17 appellate court is "concerned only with the record before the  
18 trial judge when his decision was made").

19 Conversely, Ms. Toth objects to certain portions of  
20 Mr. Short's supplemental designation of record. We overrule  
21 Ms. Toth's objections and will consider the December 1 hearing  
22 transcript (which should have been included in Ms. Toth's  
23 excerpts of record). We will consider the bankruptcy court's  
24 nondischargeability judgment (issued post-appeal) and the  
25 documents in the Colorado case only to the extent necessary to  
26 understand the factual background and procedural history of this  
27 case.

**CONCLUSION**

For the reasons set forth above, the bankruptcy court did not err when it (1) denied the Motion to Convert and (2) denied the Renewed Motion to Compromise and approved alternative relief. Accordingly, we AFFIRM.