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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NOT FOR PUBLICATION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-16-1039-FMcTa
)		
JOHN THYMES and)	Bk. No.	2:88-bk-10553-RN
SHIRLEY THYMES,)		
)		
Debtors.)		
_____)		
)		
JOHN THYMES; SHIRLEY THYMES,)		
)		
Appellants.)	MEMORANDUM*	
_____)		

Argued and Submitted on October 21, 2016
at Pasadena, California

Filed - November 9, 2016

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

Honorable Richard M. Neiter, Bankruptcy Judge, Presiding

Appearances: Appellant Shirley Thymes argued pro se.

Before: FARIS, McKITTRICK,** and TAYLOR, 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.

** The Honorable Peter C. McKittrick, United States Bankruptcy Judge for the District of Oregon, sitting by designation.

1 **INTRODUCTION**

2 In 1989, the bankruptcy court dismissed a chapter 7¹ case
3 filed by debtors John Anthony Thymes and Shirley Rose Thymes.
4 Twenty-six years later, Debtors sought relief from that order.
5 They attempted to explain their delay by claiming that they never
6 received notice of the order and had been waiting - for two and a
7 half decades - to hear from the bankruptcy court. They have
8 produced no record of what transpired in the bankruptcy court in
9 1988-89; they have not even provided a copy of the 1989 order
10 from which they seek relief. They have made no cogent legal
11 argument that the bankruptcy court erred in 1989. The bankruptcy
12 court did not err when it refused their 2015 request for relief
13 from the 1989 order. We AFFIRM.

14 **FACTUAL BACKGROUND²**

15 Debtors filed a chapter 7 petition on May 17, 1988 (the
16 "Chapter 7 Case"). The bankruptcy court dismissed the case on or
17 around July 18, 1989. The official record of that case has been
18 destroyed.

19 The Chapter 7 Case was only one of several bankruptcy cases
20 filed by Debtors in the 1980s and 1990s. On May 2, 1989, Debtors

21
22 ¹ Unless specified otherwise, all chapter and section
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
24 "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.

25 ² Debtors present us with a prohibitively limited record.
26 We have exercised our discretion to review the bankruptcy court's
27 docket, as appropriate, see Woods & Erickson, LLP v. Leonard
28 (In re AVI, Inc.), 389 B.R. 721, 725 n.2 (9th Cir. BAP 2008),
although the docket contains almost no information about what
transpired in 1988-89.

1 filed a chapter 13 petition (the "Chapter 13 Case"). The
2 disposition of the Chapter 13 Case is equally unclear; for
3 example, we do not know whether Debtors' plan was confirmed and
4 consummated or whether they received a discharge. However,
5 Debtors represented that they were paying \$1,700 per month as a
6 part of their plan.

7 On April 3, 2015, twenty-six years after the court dismissed
8 their Chapter 7 Case, Debtors filed a motion to reopen the case
9 ("Motion to Reopen"). They concurrently filed a motion for
10 relief from dismissal under Rule 9024 ("Motion for Relief"). The
11 Motion for Relief argued that Debtors were entitled to a
12 discharge in the Chapter 7 Case and that the dismissal was
13 "unconstitutional and unjust."

14 The court granted the Motion to Reopen and set a hearing on
15 the Motion for Relief on July 2, 2015.

16 Debtors did not appear at the July 2 hearing, and the court
17 denied the Motion for Relief. Instead, Debtors appeared in court
18 on July 9 and claimed that they did not receive notice of the
19 July 2 hearing. The court vacated its order denying the Motion
20 for Relief and reset the hearing for August 18. The court later
21 granted Debtors' motion to continue the hearing to September 9.

22 Following the September 9 hearing, the bankruptcy court
23 denied the Motion for Relief. The court found that: (1) the
24 Chapter 7 Case was dismissed 26 years ago, and the original case
25 files had been destroyed and cannot be retrieved; (2) the time to
26 appeal the dismissal had long expired under Rule 8002; (3) the
27 motion was grossly untimely; (4) the Motion for Relief lacked the
28 relevant information to determine whether Debtors should be

1 relieved from the order dismissing the bankruptcy case and failed
2 to specify the reason for dismissal or even attach a copy of the
3 dismissal order; and (5) Debtors have not shown that they were
4 deprived of due process.

5 On October 19, 2015, Debtors filed a motion for
6 reconsideration ("Motion for Reconsideration") that essentially
7 restated the same arguments from the Motion for Relief. Among
8 other things, they argued that creditors Metmor Financial, Inc.
9 and Cal-Western Reconveyance Corporation violated the automatic
10 stay and that they were not given notice of the 1989 dismissal.³

11 The court held a hearing on the Motion for Reconsideration.
12 Debtors' oral presentation did little to clarify their arguments.
13 Debtors referenced a debt owed to creditor Metmor Financial but
14 failed to explain it. Further, Debtors also admitted that they
15 did not have any current debt they sought to discharge and that
16 the debt owed to Metmor Financial had been "settled." Debtors
17 insisted that the Chapter 13 Case "is fine" and they're "only
18 here for the Chapter 7, because the Chapter 13 we got a judgment
19 against all these - Metmor and all these agents that we named
20 already. . . . We got a judgment and everything on that. That's
21 been settled."

22 The court struggled to ascertain what relief Debtors were
23 seeking. After the court explained its tentative ruling to deny
24 the Motion for Reconsideration, Debtors compounded the confusion
25

26 ³ Debtors also stated that the Motion for Reconsideration
27 was based on two of their other bankruptcy cases (98-bk-03657 and
28 89-bk-51827) but do not explain the relevance of those cases or
whether they were previously raised before the bankruptcy court.

1 by appearing to agree with the court that the Chapter 7 Case was
2 too old for re-adjudication:

3 THE COURT: Well, but the Chapter 7 is old and
4 cold. It's done.

5 MR. THYMES: Right. That's what I'm saying.

6 THE COURT: We can't reopen that.

7 MR. THYMES: Right. So I'm not getting off into
8 all the other cases that we got judgment on already.
9 It's just the Chapter 7 that we're supposed to be here
10 before you, and I just read your tentative ruling and
11 whatnot, and I don't see where any harm or damage could
12 be done here because everything has been settled
13 through all the other means.

14 Ultimately, the conclusion of the hearing failed to add any
15 clarity to the proceedings:

16 THE COURT: Do you deny that you got a discharge in
17 Chapter 7?

18 MR. THYMES: No, I'm not denying to get a discharge
19 for Chapter 7.

20 MS. THYMES: What is he asking? What is he asking?

21 MR. THYMES: But I'm saying at the same time we had
22 two bankruptcies pending.

23 THE COURT: Okay.

24 MR. THYMES: Yeah.

25 THE COURT: So what?

26 MR. THYMES: So what I'm saying is everything was
27 taken care of through Chapter 13.

28 THE COURT: Okay. If everything was taken care of,
we have nothing to take care of here.

MR. THYMES: Yeah, right.

THE COURT: Thank you.

MR. THYMES: Okay. That's it.

THE COURT: This is -- there is nothing that I see
to take care of here.

1 MR. THYMES: Right.

2 The bankruptcy court adopted its tentative ruling and denied
3 the Motion for Reconsideration. It held that the Motion for
4 Reconsideration did not address any of the grounds for relief
5 enumerated in Civil Rule 60(b) or present any evidence warranting
6 reconsideration and that Debtors failed to provide evidence that
7 the automatic stay or their due process rights were violated.

8 Debtors timely appealed from the orders denying the Motion
9 for Relief and Motion for Reconsideration.

10 **JURISDICTION**

11 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
12 §§ 1334 and 157(b)(1). We have jurisdiction under 28 U.S.C.
13 § 158.

14 **ISSUES**

15 (1) Whether the bankruptcy court erred in denying the Motion
16 for Relief.

17 (2) Whether the bankruptcy court erred in denying the Motion
18 for Reconsideration.

19 **STANDARDS OF REVIEW**

20 We review denials of motions for relief under Civil
21 Rule 60(b) for an abuse of discretion. See United States v.
22 Estate of Stonehill, 660 F.3d 415, 443 (9th Cir. 2011).
23 Accordingly, we reverse only where the bankruptcy court applied
24 an incorrect legal rule or where its application of the law to
25 the facts was illogical, implausible, or without support in
26 inferences that may be drawn from the record. United States v.
27 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

28 "Whether an appellant's due process rights were violated is

1 a question of law we review de novo.” DeLuca v. Seare
2 (In re Seare), 515 B.R. 599, 615 (9th Cir. BAP 2014); see also
3 HSBC Bank USA, Nat’l Ass’n v. Blendheim (In re Blendheim),
4 803 F.3d 477, 497 (9th Cir. 2015) (“Whether adequate notice has
5 been given for the purposes of due process is a mixed question of
6 law and fact that we review de novo.”). “De novo review requires
7 that we consider a matter anew, as if no decision had been made
8 previously.” Francis v. Wallace (In re Francis), 505 B.R. 914,
9 917 (9th Cir. BAP 2014) (citations omitted).

10 DISCUSSION

11 **A. Debtors failed to present any information to the bankruptcy** 12 **court to support the Motion for Relief.**

13 Debtors provide no record of what transpired in the
14 Chapter 7 Case in 1988-89, before it was closed. The fact that
15 the court’s copies of the record were destroyed does not relieve
16 Debtors of their burden to provide us with a complete record on
17 appeal. See Welther v. Donell (In re Oakmore Ranch Mgmt.),
18 337 B.R. 222, 226 (9th Cir. BAP 2006) (the appellant “bears the
19 burden of presenting a complete record”).

20 Debtors have filed multiple requests for judicial notice,
21 including one on the morning of oral argument and others after
22 the matter was submitted at the conclusion of oral argument.⁴ We
23 deny all such requests.

24 We have not considered the post-argument requests. The
25

26 ⁴ On the morning of oral argument, Debtors also filed a
27 motion asking the Panel to vacate a 1991 California superior
28 court judgment. This issue is not before us on appeal, and we
thus deny the motion.

1 submission of this matter means that the parties' opportunity to
2 present materials to the Panel has ended. Any submission of a
3 request for judicial notice thereafter is unauthorized and will
4 not be considered.

5 The documents which they ask us to consider in the
6 pre-argument request include multiple pages of argument, which
7 are really just unauthorized supplemental briefs and are not
8 proper subjects of judicial notice. Debtors also offer a
9 seemingly random collection of papers filed in other proceedings
10 before other federal and state courts. There is no indication
11 that any of those papers were before the bankruptcy court in
12 1988-89 or in 2015; most (if not all) of them did not even exist
13 until after the bankruptcy court dismissed the Chapter 7 Case in
14 1989. Finally, Debtors offer copies of summary sheets and the
15 electronic docket in the Chapter 7 Case, but those papers do not
16 help us because they contain no information from 1988-89, other
17 than to note that the Chapter 7 Case was filed and dismissed.

18 At oral argument, Debtors argued that (1) the trustee had
19 abandoned their case; (2) they want to reopen the Chapter 7 Case;
20 and (3) they want to file a quiet title action. They did not
21 elaborate on any of their arguments or explain why they are
22 entitled to that relief.

23 Ultimately, we do not know (1) what information was before
24 the bankruptcy court in the Chapter 7 Case in 1988-89; (2) what
25 the bankruptcy court did in the Chapter 7 Case in 1988-89 (other
26 than that the court dismissed the case); or (3) why the court
27 dismissed that case in 1989. In the absence of such information,
28 we cannot say that the bankruptcy court erred in 2015 when it

1 declined to grant relief from the 1989 order.

2 **B. The bankruptcy court did not deny Debtors due process.**

3 Debtors contend that the bankruptcy court denied them due
4 process because they did not receive notice of the July 2
5 hearing. Similarly, they claim that they did not receive notice
6 of the 1989 dismissal. We reject these arguments.

7 Generally speaking, a court must give sufficient notice of
8 its intention to dismiss a case and the opportunity for
9 interested parties to be heard. See Mullane v. Cent. Hanover
10 Bank & Tr. Co., 339 U.S. 306, 314 (1950); Tennant v. Rojas
11 (In re Tennant), 318 B.R. 860, 870 (9th Cir. BAP 2004). Even if
12 a bankruptcy court errs by failing to provide adequate notice and
13 hearing, however, the debtor must show prejudice from the
14 procedural deficiencies. See Rosson v. Fitzgerald
15 (In re Rosson), 545 F.3d 764, 776-77 (9th Cir. 2008); City
16 Equities Anaheim, Ltd. v. Lincoln Plaza Dev. Co. (In re City
17 Equities Anaheim, Ltd.), 22 F.3d 954, 959 (9th Cir. 1994).

18 Debtors state that the bankruptcy court sent notice of the
19 July 2 hearing to an incorrect address and, as a result, they
20 were denied an opportunity be heard. But even if Debtors did not
21 receive notice of the July 2 hearing, they were not prejudiced.
22 The court promptly vacated the denial of the Motion for Relief
23 and reset the matter for hearing on September 9 at Debtors'
24 request. As far as we can tell, Debtors appeared at the
25 September 9 hearing and were heard.

26 Debtors also argue that the court denied them due process by
27 failing to give them notice of the dismissal in 1989. Debtors
28 cannot point to anything in the record that confirms their

1 allegation, and they do not identify any prejudice they suffered.
2 Moreover, they slept on their rights for twenty-six years. We
3 thus discern no error.⁵

4 **C. Debtors fail to establish a violation of the automatic stay.**

5 Debtors argue that the California superior court, creditors
6 Metmor Financial and Cal-Western Reconveyance Corporation, and
7 the chapter 7 trustee violated the automatic stay. They provide
8 no information to substantiate or even describe the supposed
9 violations.⁶

10 Debtors ask us to take judicial notice of the alleged
11 violations of the automatic stay in the Chapter 13 Case. But
12 issues relating to the Chapter 13 Case are not before us on this
13 appeal in the Chapter 7 Case.

14 Moreover, this appeal relates to the dismissal of the
15 Chapter 7 Case. Any violation of the automatic stay has no
16 bearing on whether the dismissal was proper. Therefore, this
17 argument is irrelevant to the order on appeal.

18 **D. Debtors' remaining arguments lack legal and factual support.**

19 Debtors offer numerous other reasons why the bankruptcy
20 court should have set aside the 1989 dismissal. They argue that
21 the trustee violated the law and Debtors' constitutional rights;
22 the trustee breached his duty to protect Debtors' interest in
23

24 ⁵ In light of our discussion concerning the alleged
25 deprivation of due process, we need not address the bankruptcy
26 court's conclusion that no government action occurred.

27 ⁶ Some of the documents in Debtors' second request for
28 judicial notice indicate that Cal-Western Reconveyance
Corporation foreclosed on Debtors' property. But we do not take
judicial notice of these documents for their purported truth.

1 exemptions; the bankruptcy court failed to take judicial notice
2 of Debtors' exhibits; the bankruptcy court lacked jurisdiction;
3 the Chapter 7 Case was "first" and should be the "lead case";
4 Debtors are judgment-proof and should receive a discharge;
5 excusable neglect justifies the late Motion for Relief; and a
6 creditor's 1989 notice of trustee's sale was fraudulent.

7 Aside from one-sentence statements of purported errors,
8 Debtors fail to explain the factual or legal bases for their
9 arguments. We will not review arguments on appeal that are not
10 distinctly argued or supported by the record. See Christian
11 Legal Soc. Chapter of Univ. of Cal. v. Wu, 626 F.3d 483, 487 (9th
12 Cir. 2010) (An appellate court "won't consider matters on appeal
13 that are not specifically and distinctly argued in appellant's
14 opening brief.").

15 Furthermore, many of these arguments were not presented in
16 any substantial way to the bankruptcy court in the first
17 instance. See Yamada v. Nobel Biocare Holding AG, 825 F.3d 536,
18 543 (9th Cir. 2016) ("Generally, an appellate court will not hear
19 an issue raised for the first time on appeal.")

20 And, again, there is no record to tell us what actually
21 happened during the Chapter 7 Case.

22 Accordingly, we find no error.

23 **E. The bankruptcy court did not err in denying the Motion for**
24 **Reconsideration.**

25 Both in the Motion for Reconsideration and their oral
26 presentation, Debtors merely repeated the arguments raised in the
27 Motion for Relief. They did not present any compelling (or even
28 comprehensible) reason to reconsider the order denying the Motion

1 for Relief. See Agostini v. Felton, 521 U.S. 203, 257 (1997)
2 (“relitigation of the legal or factual claims underlying the
3 original judgment is not permitted in a Rule 60(b) motion or an
4 appeal therefrom”). Indeed, at the hearing, they agreed with the
5 court that nothing further could be done in the Chapter 7 Case.

6 The court did not abuse its discretion in denying the Motion
7 for Reconsideration.

8 **CONCLUSION**

9 For the reasons set forth above, the bankruptcy court
10 properly denied the Motion for Relief and the Motion for
11 Reconsideration. Accordingly, we AFFIRM.