

OCT 17 2017

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NOT FOR PUBLICATION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. MT-17-1085-FBKu  
 )  
 JOHN PATRICK STOKES, ) Bk. No. 2:16-bk-60720-JDP  
 )  
 Debtor. )  
 )  
 \_\_\_\_\_ )  
 JOHN PATRICK STOKES, )  
 )  
 Appellant, )  
 )  
 v. ) **MEMORANDUM\***  
 )  
 ROBERT G. DRUMMOND, )  
 Chapter 13 Trustee, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Argued and Submitted on September 28, 2017  
at Seattle, Washington

Filed - October 17, 2017

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

Honorable Jim D. Pappas, Bankruptcy Judge, Presiding

Appearances: Appellant John Patrick Stokes argued pro se;  
Appellee Robert G. Drummond, Chapter 13 Trustee,  
argued pro se.

Before: FARIS, BRAND, and KURTZ, 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 **INTRODUCTION**

2 Chapter 13<sup>1</sup> debtor John Patrick Stokes appeals from the  
3 bankruptcy court's orders dismissing his case, denying his motion  
4 to vacate the dismissal, and denying his motion for  
5 reconsideration. Because Mr. Stokes did not timely file his  
6 motion to vacate or motion for reconsideration, our appellate  
7 jurisdiction is limited to a review of the denial of  
8 reconsideration. We discern no error and AFFIRM.

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

10 On July 15, 2016, Mr. Stokes filed a chapter 13 petition in  
11 the United States Bankruptcy Court for the District of Montana to  
12 halt a foreclosure of his real property. That same day, the  
13 bankruptcy court issued the required Notice of Chapter 13  
14 Bankruptcy Case ("Notice"). The top of the second page of the  
15 Notice stated: "Meeting of creditors. Debtors must attend the  
16 meeting to be questioned under oath." The Notice provided in  
17 bold that the meeting of creditors would be held on August 11,  
18 2016 at 2:00 p.m. in Kalispell, Montana. The Notice was sent by  
19 first class mail to Mr. Stokes' address in Big Fork, Montana.

---

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

25 <sup>2</sup> Mr. Stokes fails to offer a complete record on appeal and  
26 only provides a list of document names and a few unfile-marked  
27 documents. Fortunately, the appellee presents comprehensive  
28 excerpts of record. We also take judicial notice of the  
bankruptcy court's electronic docket. See Atwood v. Chase  
Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th  
Cir. BAP 2003).

1 Prior to the meeting of creditors, Appellee Richard G.  
2 Drummond, Chapter 13 Trustee ("Trustee"), filed a motion to  
3 dismiss based on Mr. Stokes' failure to file all of his tax  
4 returns. The court set a hearing for the motion to dismiss on  
5 September 15.

6 Mr. Stokes did not appear at the meeting of creditors on  
7 August 11. The next day, the Trustee filed a notice of  
8 Mr. Stokes' failure to appear and requested dismissal pursuant to  
9 Local Bankruptcy Rule 2003-7.<sup>3</sup> That same day, the bankruptcy  
10 court issued an order dismissing the case. Both the Trustee's  
11 request and the order were sent to Mr. Stokes' address of record  
12 via first class mail.

13 On August 23, the Trustee filed his Final Report and  
14 Account. The bankruptcy court closed the case on August 30.

15 On November 4, Mr. Stokes filed a motion to reopen his  
16 chapter 13 case. He stated that he "accidentally missed" the  
17 August 11 meeting of creditors because he believed that the  
18

---

19 <sup>3</sup> LBR 2003-7 provides, in relevant part:  
20

21 If a debtor fails to appear at the meeting of  
22 creditors scheduled pursuant to 11 U.S.C. § 341(a), the  
23 case may be dismissed or converted by the Court upon  
24 notification by the trustee or the U.S. Trustee of  
25 debtor's failure to appear (See Mont. LBF 7 and 7-A),  
26 unless the debtor or the debtor's attorney filed an  
27 application for continuance not later than fourteen  
28 (14) days prior to the scheduled creditors' meeting, as  
required under Mont. LBR 2003-4 above, and such  
application was granted by the U.S. Trustee. Failure  
to timely file an application for continuance may  
result in the case being dismissed or converted, unless  
the trustee or other party in interest requests that  
the case remain open or in the present chapter.

1 September 15 hearing on the Trustee's motion to dismiss "took  
2 precedence, Debtor was wrong." He represented that he did not  
3 find out that his case was dismissed until late August or early  
4 September. The bankruptcy court granted the motion and reopened  
5 Mr. Stokes' chapter 13 case.

6 On November 18, Mr. Stokes filed a Motion to Vacate  
7 Dismissal ("Motion to Vacate"). He did not address the order  
8 dismissing his case or his failure to attend the meeting of  
9 creditors but instead argued that three creditors had committed  
10 mortgage fraud in attempting to foreclose on his property. He  
11 requested that the court vacate the dismissal so that he could  
12 collect on judgments against those creditors to bring funds into  
13 the estate.

14 In his reply brief, Mr. Stokes addressed the dismissal,  
15 stating, "Stokes absolutely made a mistake. A fatal but  
16 correctable mistake. Stokes falsely believed that the creditors  
17 meeting was postponed and Debtor completely put it out of his  
18 mind." He also attacked the Trustee, claiming that the Trustee  
19 misled him by offering assistance without mentioning the upcoming  
20 meeting of creditors.

21 The bankruptcy court held a hearing on the Motion to Vacate.  
22 Mr. Stokes briefly addressed the grounds for the Motion to  
23 Vacate, stating that he was preoccupied with preparing for the  
24 hearing on the motion to dismiss, yet for the first time also  
25 stated contradictorily that he "just forgot" about the meeting of  
26 creditors. He repeated his arguments that the creditors had  
27 committed mortgage fraud with the Trustee's assistance.

28 The bankruptcy court then placed him under oath, asked

1 questions, and permitted opposing counsel to cross-examine him.  
2 Mr. Stokes admitted that he had filed two prior bankruptcy cases  
3 and that his wife had filed for bankruptcy once, so he was aware  
4 of bankruptcy procedure, including the meeting of creditors.  
5 When the questions and answers veered off to the underlying  
6 dispute between the parties and the alleged mortgage fraud, the  
7 court interrupted the parties and informed them that it was only  
8 concerned with the dismissal for Mr. Stokes' failure to attend  
9 the meeting of creditors.

10 The bankruptcy court issued its memorandum of decision on  
11 January 9, 2017, holding that Mr. Stokes was not entitled to  
12 relief under either Civil Rule 59 or 60.

13 Over fourteen days later, on January 26, Mr. Stokes filed a  
14 motion for reconsideration of the denial of the Motion to Vacate  
15 ("Motion for Reconsideration"). This time, he represented that  
16 he had simply forgotten to attend the meeting of creditors:  
17 "Stokes completely made the case for a 'mistake' as it truly was.  
18 Forgetting is a mistake."

19 He also accused the Trustee of colluding with creditors to  
20 deny him access to the courts, fabricate evidence and false  
21 proofs of claim, and advance the creditors' interests. He said  
22 that he had "newly discovered [evidence] . . . that Trustee  
23 Drummond was working hand in glove with First American to  
24 facilitate dismissal and trustee sale." He also generally  
25 represented that he had evidence that the proofs of claim were  
26 fraudulent.

27 On January 30, without a hearing, the bankruptcy court  
28 issued an order denying the Motion for Reconsideration for all of

1 the reasons given in its order denying the Motion to Vacate.

2 On February 13, Mr. Stokes filed a notice of appeal from the  
3 bankruptcy court's orders (1) dismissing the case, (2) denying  
4 the Motion to Vacate, and (3) denying the Motion for  
5 Reconsideration.

6 **JURISDICTION**

7 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
8 §§ 1334 and 157(b)(1). Subject to our discussion below, we have  
9 jurisdiction under 28 U.S.C. § 158.

10 **ISSUE**

11 Whether the bankruptcy court abused its discretion in  
12 denying the Motion for Reconsideration.

13 **STANDARD OF REVIEW**

14 We review for abuse of discretion a bankruptcy court's  
15 denial of a motion for reconsideration. See Ahanchian v. Xenon  
16 Pictures, Inc., 624 F.3d 1253, 1258 (9th Cir. 2010); Tennant v.  
17 Rojas (In re Tennant), 318 B.R. 860, 866 (9th Cir. BAP 2004).

18 To determine whether the bankruptcy court has abused its  
19 discretion, we conduct a two-step inquiry: (1) we review de novo  
20 whether the bankruptcy court "identified the correct legal rule  
21 to apply to the relief requested" and (2) if it did, whether the  
22 bankruptcy court's application of the legal standard was  
23 illogical, implausible, or without support in inferences that may  
24 be drawn from the facts in the record. United States v. Hinkson,  
25 585 F.3d 1247, 1262-63 & n.21 (9th Cir. 2009) (en banc). "If the  
26 bankruptcy court did not identify the correct legal rule, or its  
27 application of the correct legal standard to the facts was  
28 illogical, implausible, or without support in inferences that may

1 be drawn from the facts in the record, then the bankruptcy court  
2 has abused its discretion.” USAA Fed. Sav. Bank v. Thacker  
3 (In re Taylor), 599 F.3d 880, 887-88 (9th Cir. 2010) (citing  
4 Hinkson, 585 F.3d at 1261-62).

## 5 DISCUSSION

### 6 **A. The scope of this appeal is limited to the Motion for** 7 **Reconsideration.**

8 As an initial matter, we must consider whether we have  
9 jurisdiction to review the orders on appeal. “The untimely  
10 filing of a notice of appeal deprives us of jurisdiction.”  
11 Charlie Y., Inc. v. Carey (In re Carey), 446 B.R. 384, 389  
12 (9th Cir. BAP 2011) (citations omitted); see Samson v. W. Capital  
13 Partners, LLC (In re Blixseth), 684 F.3d 865, 869 (9th Cir.  
14 2012).

15 An appeal from a final bankruptcy court order must be filed  
16 within fourteen days of entry of the order. See Rule 8002(a).  
17 The deadline for filing an appeal is mandatory and  
18 jurisdictional. See Browder v. Director, Dep’t of Corrections,  
19 434 U.S. 257, 264 (1978); Slimick v. Silva (In re Slimick),  
20 928 F.2d 304, 306 (9th Cir. 1990).

21 Rule 8002(b) tolls the time for filing an appeal if a party  
22 files a motion to alter or amend the judgment under Rule 9023 or  
23 a motion for relief under Rule 9024 within fourteen days after  
24 the judgment is entered. Rule 8002(b)(1)(B), (D). An untimely  
25 motion for reconsideration will not extend the time to file a  
26 notice of appeal. Preblich v. Battley, 181 F.3d 1048, 1057 (9th  
27 Cir. 1999); see Pryor v. B Squared, Inc. (In re B Squared, Inc.),  
28 654 F. App’x 268, 269 (9th Cir. 2016) (“To the extent that

1 [debtor] challenges the underlying dismissal order, we lack  
2 jurisdiction over that decision because [debtor] did not timely  
3 appeal from it, and the late-filed motion for reconsideration did  
4 not toll the time for filing the appeal.”).

5 The bankruptcy court’s August 12, 2016 dismissal order was a  
6 final, appealable order. See Neary v. Padilla (In re Padilla),  
7 222 F.3d 1184, 1188 (9th Cir. 2000) (stating that a “bankruptcy  
8 court’s order dismissing [a debtor’s] bankruptcy petition is a  
9 final order”). Mr. Stokes did not file a notice of appeal or  
10 tolling motion within fourteen days. Thus, he cannot appeal the  
11 dismissal order.<sup>4</sup> See Rule 8002(a).

12 The January 9, 2017 order denying the Motion to Vacate was  
13 also a final, appealable order. See Mason v. Integrity Ins. Co.  
14 (In re Mason), 709 F.2d 1313, 1315 (9th Cir. 1983) (“Orders  
15 denying relief on [motions to vacate] are generally considered to  
16 be final and appealable.”). Mr. Stokes did not file a notice of  
17 appeal or tolling motion within fourteen days. Rather, he filed  
18 his Motion for Reconsideration seventeen days later on  
19 January 26. Thus, the Motion for Reconsideration did not toll  
20 the time to file an appeal from the order denying the Motion to  
21 Vacate, and we lack jurisdiction to consider any argument on  
22 appeal relating to the Motion to Vacate.

23 Mr. Stokes filed a timely notice of appeal within fourteen  
24 days of the January 30 order denying the Motion for

---

25  
26 <sup>4</sup> We express no opinion as to the propriety of the local  
27 rule allowing the ex parte dismissal of a debtor’s bankruptcy  
28 case for failure to appear at a § 341 meeting of creditors. We  
do not have jurisdiction to review the dismissal order, and  
Mr. Stokes did not raise this issue.

1 Reconsideration. Thus, the scope of this appeal is limited to  
2 the order denying the Motion for Reconsideration.

3 **B. The bankruptcy court did not err in denying the Motion for**  
4 **Reconsideration.**

5 Mr. Stokes' only viable argument on appeal is that the  
6 bankruptcy court abused its discretion in denying his Motion for  
7 Reconsideration. Although he lists fifteen issues on appeal, he  
8 makes only two arguments: (1) he repeats his original argument  
9 (rejected by the bankruptcy court) that he made a mistake and  
10 forgot to (or did not think he had to) attend the § 341(a)  
11 meeting of creditors, and (2) he claims that the Trustee colluded  
12 with certain creditors to "harm Stokes and make him homeless."  
13 We discern no reversible error.<sup>5</sup>

14 We examine Mr. Stokes' arguments under Civil Rule 60(b).  
15 See Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.,  
16 248 F.3d 892, 898-99 (9th Cir. 2001) ("A 'motion for  
17 reconsideration' is treated as a motion to alter or amend  
18 judgment under Federal Rule of Civil Procedure 59(e) if it is  
19 filed within [fourteen] days of entry of judgment. Otherwise, it  
20 is treated as a [Civil] Rule 60(b) motion for relief from a  
21 judgment or order." (citation omitted)). Civil Rule 60(b)  
22 provides:

23 On motion and just terms, the court may relieve a party  
24 or its legal representative from a final judgment,

---

25 <sup>5</sup> Following oral argument and submission of this case,  
26 Mr. Stokes filed a supplemental document entitled "Appellant[']s  
27 Clarified Answer to Judge Farris [sic] on Oral Argument  
28 September 28, 2017. Judicial Notice of Prejudice Upon Remand."  
The Panel will not consider his unauthorized supplemental filing.  
See Rule 8018(a) (3).

1 order, or proceeding for the following reasons:

2 (1) mistake, inadvertence, surprise, or excusable  
3 neglect;

4 (2) newly discovered evidence that, with  
5 reasonable diligence, could not have been  
6 discovered in time to move for a new trial under  
7 Rule 59(b);

8 (3) fraud (whether previously called intrinsic or  
9 extrinsic), misrepresentation, or misconduct by an  
10 opposing party;

11 (4) the judgment is void;

12 (5) the judgment has been satisfied, released or  
13 discharged; it is based on an earlier judgment  
14 that has been reversed or vacated; or applying it  
15 prospectively is no longer equitable; or

16 (6) any other reason that justifies relief.

17 Civil Rule 60(b)(1)-(6). We construe his arguments liberally.  
18 Kashani v. Fulton (In re Kashani), 190 B.R. 875, 883 (9th Cir.  
19 BAP 1995).

20 Regarding his failure to attend the meeting of creditors,  
21 Mr. Stokes merely repeated the contradictory arguments raised in  
22 the Motion to Vacate: he was aware of the meeting of creditors,  
23 but thought another hearing took precedence and the meeting was  
24 postponed; or he just forgot to appear. The bankruptcy court has  
25 wide latitude to determine whether a particular "mistake"  
26 justifies relief under Civil Rule 60(b)(1). See Navajo Nation v.  
27 Confederated Tribes & Bands of the Yakama Indian Nation, 331 F.3d  
28 1041, 1046 (9th Cir. 2003) ("Whether or not to grant  
reconsideration is committed to the sound discretion of the  
court."). The bankruptcy court had already rejected these  
arguments when it denied the Motion to Vacate, and Mr. Stokes did  
not present the bankruptcy court with any compelling reason to

1 reconsider that decision. See Agostini v. Felton, 521 U.S. 203,  
2 257 (1997) (stating that "relitigation of the legal or factual  
3 claims underlying the original judgment is not permitted in a  
4 Rule 60(b) motion or an appeal therefrom").

5 Mr. Stokes contends that the Trustee and certain creditors  
6 committed fraud or misconduct. If we afford these arguments a  
7 liberal interpretation, they might invoke Civil Rule 60(b)(3).  
8 "[T]he moving party must prove by clear and convincing evidence  
9 that the verdict was obtained through fraud, misrepresentation,  
10 or other misconduct and the conduct complained of prevented the  
11 losing party from fully and fairly presenting the defense. . . .  
12 [The] fraud . . . [must] not be discoverable by due diligence  
13 before or during the proceedings." Casey v. Albertson's Inc.,  
14 362 F.3d 1254, 1260 (9th Cir. 2004) (internal citations omitted).

15 But these arguments concern supposed misconduct arising from  
16 the underlying dispute and sale of his property, not anything  
17 connected to the dismissal of his chapter 13 case or the Motion  
18 to Vacate. See Pac. & Arctic Ry. & Nav. Co. v. United Transp.  
19 Union, 952 F.2d 1144, 1148 (9th Cir. 1991) (stating that, under  
20 Civil Rule 60(b)(3), the fraud must "be materially related to the  
21 submitted issue"). In any event, Mr. Stokes offered only  
22 conjecture and unsupported speculation that the Trustee was  
23 "working hand in glove" with the creditors to perpetuate fraud.  
24 The bankruptcy court did not err in rejecting these arguments.

25 On appeal, Mr. Stokes expands on his unsupported claims  
26  
27  
28

1 concerning the alleged fraud and misconduct.<sup>6</sup> These are new  
2 arguments not substantively raised before the bankruptcy court,  
3 so we will not consider them. See Yamada v. Nobel Biocare  
4  Holding AG, 825 F.3d 536, 543 (9th Cir. 2016). Further, these  
5 arguments are not relevant to the reconsideration of the order  
6 denying the Motion to Vacate, but rather concern the underlying  
7 collection dispute between the parties.<sup>7</sup>

8 **CONCLUSION**

9 The bankruptcy court did not abuse its discretion in denying  
10 the Motion for Reconsideration. Accordingly, we AFFIRM.

---

22 <sup>6</sup> The majority of the argument in Mr. Stokes' opening brief  
23 consists of a cut-and-pasted treatise or handbook on a chapter 13  
24 trustee's duties. He does not provide any other authority  
supporting his position.

25 <sup>7</sup> Mr. Stokes argues that we must strike the Trustee's  
26 answering brief because he did not sign and date it. While he is  
27 correct that the Trustee did not affix his signature at the end  
28 of the brief, the Trustee's electronic signature appears on the  
second page of the document, which contains the certification  
required by BAP Rule 8015(a)-1. This signature is sufficient.