

OCT 08 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In the Matter of: THOMAS R. BEATY;  
NANCY Z. BEATY,

Debtors,

DAVID SELINGER,

Appellant,

v.

THOMAS R. BEATY; et al.,

Appellees.

No. 08-60027

BAP No. SC-07-1278-MkDoK

MEMORANDUM\*

Appeal from the Ninth Circuit  
Bankruptcy Appellate Panel  
Klein, Markell, and Dunn, Bankruptcy Judges, Presiding

Submitted September 14, 2009\*\*

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

David Selinger appeals pro se from the Bankruptcy Appellate Panel's ("BAP") order denying his motion to reopen the time to file a notice of appeal. We have jurisdiction under 28 U.S.C. § 158(d). We review for abuse of discretion. *Arai v. Am. Bryce Ranches Inc.*, 316 F.3d 1066, 1069-70 (9th Cir. 2003). We affirm in part and dismiss in part.

The BAP did not abuse its discretion by denying the motion to reopen because Selinger had not established the essential elements of Rule 4(a)(6) of the Federal Rules of Appellate Procedure. *See Nunley v. City of L.A.*, 52 F.3d 792, 796 (9th Cir. 1995) (explaining that the movant bears the burden of proving non-receipt of the entry of judgment); *see also Arai*, 316 F.3d at 1069 (holding that Rule 4(a)(6) does not require the court to grant the relief, even if the requirements are met).

To the extent Selinger seeks to appeal other issues, we lack jurisdiction to review them. *See Fed. R. App. P. 4(a)(1)(A)*; *Stephanie-Cardona LLC v. Smith's Food & Drug Ctrs., Inc.*, 476 F.3d 701, 703 (9th Cir. 2007) ("A timely notice of appeal is a non-waivable jurisdictional requirement.").

Appellees' motion to strike portions of Selinger's opening brief is denied as moot.

**AFFIRMED in part and DISMISSED in part.**