

MAY 22 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: ERIC NICHOLS and BONITA M.
NICHOLS,

Debtors,

ERIC NICHOLS; BONITA M.
NICHOLS,

Appellants,

v.

ALIGN WESTERN STATES LEARNING
CORPORATION,

Appellee.

No. 13-60093

BAP No. 12-1305

MEMORANDUM*

Appeal from the Ninth Circuit

Bankruptcy Appellate Panel

Jury, Taylor and Ahart, Bankruptcy Judges, Presiding

Submitted May 13, 2015**

Before: LEAVY, CALLAHAN, and M. SMITH, 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Eric Nichols and Bonita M. Nichols appeal pro se from the Bankruptcy Appellate Panel's order affirming the bankruptcy court's order dismissing the Nichols' adversary proceeding seeking to discharge Eric's student loans. We have jurisdiction under 28 U.S.C. § 158. We independently review the bankruptcy court decision, reviewing the bankruptcy court's interpretation of the code de novo and its factual findings for clear error. *Educ. Credit Mgmt. Corp. v. Mason (In re Mason)*, 464 F.3d 878, 881 (9th Cir. 2006). We affirm.

The bankruptcy court properly dismissed the Nichols' adversary proceeding because they failed to make a prima facie showing that excepting the debt from discharge would constitute an undue hardship. *Rifino v. United States (In re Rifino)*, 245 F.3d 1083, 1087-88 (9th Cir. 2001) (debtor has burden of proof on undue hardship, and must satisfy all three elements of the *Brunner* test before a discharge can be granted).

We reject the Nichols' contentions that the bankruptcy judge was biased, violated due process, and erred in announcing its findings of fact and conclusions of law on the record following the close of the hearing.

AFFIRMED.