

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2017

FOR THE NINTH CIRCUIT

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

In re: LOREN MILLER; SARAH
MILLER,

Debtors,

LOREN MILLER,

Appellant,

v.

ANDREW D. GELLER; ANDREW D. &
EILEEN B. GELLER, Trustees of the Geller
Trust Dated September 2, 1987,

Appellees.

No. 16-55732

D.C. No. 2:16-cv-00258-SJO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted August 9, 2017**

Before: SCHROEDER, TASHIMA, and M. SMITH, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

Chapter 7 debtor Loren Miller appeals pro se from the district court's order dismissing for failure to prosecute his appeal from the bankruptcy court. We have jurisdiction under 28 U.S.C. § 158(d). We review for an abuse of discretion. *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002). We affirm.

The district court did not abuse its discretion by dismissing Miller's appeal because Miller failed to comply with the district court's orders instructing him to prosecute the appeal, including filing the designations of record, statement of issues on appeal, and notice regarding the ordering of transcripts with the bankruptcy court. *See id.* at 642-43 (discussing the five factors for determining whether to dismiss under Fed. R. Civ. P. 41(b) for failure to comply with a court order); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (although dismissal is a harsh penalty, the district court's dismissal should not be disturbed absent "a definite and firm conviction" that it "committed a clear error of judgment" (citation and internal quotation marks omitted)).

The district court did not abuse its discretion by denying Miller's motion for reconsideration of the dismissal of his appeal because Miller failed to demonstrate any basis for relief. *See Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993) (setting forth grounds for relief from judgment

under Rule 60 of the Federal Rules of Civil Procedure).

We reject as meritless Miller's contentions regarding alleged judicial bias.

Miller's request to take judicial notice of the underlying proceedings, set forth in his opening brief, is denied as unnecessary.

AFFIRMED.