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OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re: HENRY GOSSAGE, Debtor.	BAP No. WW-25-1232-CNB Bk. No. 3:25-bk-41223-MJH
HENRY GOSSAGE, Appellant, v. MICHAEL G. MALAIER, Appellee.	**MEMORANDUM**[*]

Appeal from the United States Bankruptcy Court
for the Western District of Washington
Mary Jo Heston, Bankruptcy Judge, Presiding

Before: CORBIT, NIEMANN, and BRAND, Bankruptcy Judges.

INTRODUCTION

Chapter 13[1] debtor Henry Gossage appeals the bankruptcy court's order denying his motion to vacate the order dismissing his bankruptcy

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[*] 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] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

case. Because the bankruptcy court did not abuse its discretion, we AFFIRM.

FACTS

Mr. Gossage, proceeding in pro per, filed an incomplete chapter 13 bankruptcy petition on May 26, 2025. By docket order, Mr. Gossage was notified that he must timely file the missing documents, or risk dismissal of his case.

Mr. Gossage filed his first chapter 13 plan on May 30, 2025. The proposed plan, however, was lacking in virtually every aspect. Specifically, it did not identify any secured or unsecured claims, and it did not propose making any payments.

Both secured creditor LoanDepot.com, LLC ("LoanDepot") and the chapter 13 trustee ("Trustee") filed objections to the proposed plan. LoanDepot objected because the plan did not acknowledge or provide for payment on its claim secured by a deed of trust encumbering real property owned by Mr. Gossage and located in Ocean Shores, Washington ("Property"). Trustee objected on the basis that the plan was not feasible and was not proposed in good faith because the plan was "essentially blank" and failed to provide for any payments. Trustee also noted that Mr. Gossage failed to provide documents Trustee requested, including statements related to his banking and trading accounts, and Mr. Gossage failed to disclose other real property in which he might have an ownership interest.

Mr. Gossage subsequently filed two amended plans. Trustee and LoanDepot renewed their objections, again asserting that the amended plans were not feasible and were not filed in good faith. Trustee specifically argued that Mr. Gossage was undervaluing the Property by approximately $100,000 and was attempting to misrepresent his ownership interest in the Property.

On July 28, 2025, the bankruptcy court entered an order sustaining Trustee's objection to confirmation and informing Mr. Gossage that he had one last chance to propose a feasible plan within stated strict parameters ("Last Chance Order"). Specifically, the court required Mr. Gossage to propose a feasible plan within fourteen days and to properly notice[2] the amended plan for hearing pursuant to Rule 2002(b). The Last Chance Order warned Mr. Gossage that his failure to comply could result in dismissal of his case. Although Mr. Gossage filed a third amended plan within the allotted fourteen days, he did not notice it for hearing as required by Last Chance Order.

In response, Trustee filed a motion to dismiss or convert the bankruptcy case, citing several reasons. First, Trustee asserted that Mr. Gossage's failure to stay current on his plan payments was cause to dismiss pursuant to § 1307(c)(6). Second, Trustee asserted that the most recent proposed plan was not feasible or confirmable because it was based

[2] While the Last Chance Order reads "note," the bankruptcy court likely meant "notice" as used in Rule 2002(b).

on schedules and statements that remained incomplete, internally inconsistent, and omitted numerous judgment creditors. Third, Trustee maintained that Mr. Gossage's claimed exemptions were invalid and that he had misrepresented and undervalued ownership interests in several real properties. Finally, Trustee argued that despite filing several amended schedules, none of the amendments resolved Trustee's various objections. Trustee explained that while Mr. Gossage had submitted countless pages of incomplete and irrelevant documents, he failed to provide many of the documents requested by Trustee, including specific bank statements. Trustee asserted that Mr. Gossage's "unjustified failure to file complete and accurate Schedules and Statements and his willful failure to supply Trustee with the requisite [Rule] 4002" financial information caused unreasonable delay that was prejudicial to creditors and was cause to dismiss pursuant to § 1307(c)(1).

Judgment creditor Reality Homes, Inc. also filed a motion objecting to confirmation. Reality Homes asserted that Mr. Gossage filed his petition solely to stop its foreclosure and never intended to propose a feasible plan. Reality Homes agreed with Trustee that Mr. Gossage had misrepresented his ownership interest in real property located in Olympia, Washington.

The initial hearing on Trustee's motion to dismiss was continued to September 23, 2025. Mr. Gossage did not appear at the continued hearing. Later that day, the bankruptcy court entered an order granting Trustee's motion and dismissing Mr. Gossage's bankruptcy case (the "Dismissal

Order”).

Nine days later, on October 2, 2025, Mr. Gossage filed a motion for reconsideration of the Dismissal Order. Mr. Gossage explained that he missed the dismissal hearing because he was at a dental appointment and thought the hearing was scheduled for October 1, 2025.

Finding that Mr. Gossage failed “to provide any new facts or legal authority sufficient to cause the court to reconsider” the Dismissal Order, the bankruptcy court denied his request for reconsideration on October 8, 2025. The court explained in its order denying reconsideration that the case was not dismissed because Mr. Gossage failed to attend the continued dismissal hearing. Rather, the case was dismissed because Mr. Gossage: (1) failed to present and notice for hearing a feasible plan as required by the Last Chance Order; (2) failed to provide Trustee with the requested documents; and (3) was delinquent on plan payments. The order denying reconsideration also noted Mr. Gossage should have brought a motion to vacate dismissal, but insufficient notice was provided even if the court were to treat the motion as such.

On October 20, 2025, Mr. Gossage filed essentially the same motion again, merely changing the caption from reconsideration to a motion to “vacate dismissal.” The bankruptcy court held a hearing on the motion to vacate the dismissal on November 18, 2025. The bankruptcy court entered an order denying the motion the next day (“Order Denying Motion to Vacate”).

In the Order Denying Motion to Vacate, the bankruptcy court noted that Mr. Gossage was seeking to vacate the dismissal because he inadvertently missed the September 23, 2025 dismissal hearing due to a dental appointment. The bankruptcy court determined that Mr. Gossage had not met his burden under Civil Rule 60(b)(1) or (6). Specifically, the court determined that Mr. Gossage's excuse did "not rise to the level of excusable neglect as required to provide relief under [Civil] Rule 60(b)(1)" and further found that it was not "an extraordinary circumstance justifying relief under Rule 60(b)(6)." The court again explained that "his failure to appear was not the primary reason his case was dismissed." Rather, Mr. Gossage's case was "dismissed because he failed to file a confirmable plan and note it for hearing as required by the [Last Chance] Order" and failed to "provide all documents required by the Trustee or stay current on plan payments."

Mr. Gossage timely appealed the Order Denying Motion to Vacate.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

ISSUE

Whether the bankruptcy court's Order Denying Motion to Vacate was an abuse of its discretion.

STANDARD OF REVIEW

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

A bankruptcy court abuses its discretion when it applies the wrong legal standard or when its findings of fact or its application of law to fact are illogical, implausible, or without support in inferences that may be drawn from the record. *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

DISCUSSION

A. The scope of this appeal is limited to the Order Denying Motion to Vacate.

As an initial matter, we must clarify the scope of this appeal. Mr. Gossage filed his motion for reconsideration within 14 days after entry of the Dismissal Order.[3] Thus, pursuant to Rule 8002(b), the time for Mr. Gossage to appeal the Dismissal Order was tolled until fourteen days after the bankruptcy court issued its ruling on his reconsideration motion.

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[3] Motions to reconsider are not specifically mentioned in the Federal Rules of Civil or Bankruptcy Procedure. *Captain Blythers, Inc. v. Thompson (In re Captain Blythers, Inc.)*, 311 B.R. 530, 539 (9th Cir. BAP 2004). Instead, such motions are considered either a motion to alter or amend the judgment under Civil Rule 59(e) if filed within fourteen days of the order, or a motion for relief from judgment under Civil Rule 60(b) if filed later. Civil Rules 59(e) and 60(b) are made applicable to bankruptcy by Rules 9023 and 9024, respectively. Here, the bankruptcy court determined the reconsideration motion to be a timely-filed Civil Rule 59 motion.

This is because "[a] motion for reconsideration filed within 14 days of the underlying order is treated as a motion to alter or amend a judgment under Civil Rule 59(e) and tolls the time within which to file a notice of appeal of the underlying order until the order on reconsideration is entered." *Fadel v. DCB United LLC (In re Fadel)*, 492 B.R. 1, 18 (9th Cir. BAP 2013).

The bankruptcy court denied Mr. Gossage's motion for reconsideration on October 8, 2025. Thus, Mr. Gossage had until October 22, 2025, to timely appeal the Dismissal Order.

Mr. Gossage did not appeal the Dismissal Order within this time frame. Rather, Mr. Gossage filed a motion to vacate the dismissal in the bankruptcy court on October 20, 2025.[4] Mr. Gossage did not file a notice of appeal until December 8, 2025.

Consequently, our review is limited solely to the Order Denying Motion to Vacate; it does not include reviewing the Dismissal Order. *See Pryor v. B Squared, Inc. (In re B Squared, Inc.)*, 654 F. App'x 268, 269 (9th Cir. 2016) ("To the extent that [debtor] challenges the underlying dismissal order, we lack jurisdiction over that decision because [debtor] did not timely appeal from it, and the late-filed motion for reconsideration did not toll the time for filing the appeal."); *see also Hayward v. Britt*, 572 F.2d 1324, 1325 (9th Cir. 1978) (noting "an appeal from an order denying a [Civil] Rule

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[4] The bankruptcy court considered the Motion to Vacate to be a motion for relief under Civil Rule 60(b), made applicable to bankruptcy through Rule 9024.

60(b) motion brings up for review only the correctness of that denial and does not bring up for review the final judgment”).

B. The bankruptcy court did not abuse its discretion in denying Mr. Gossage’s motion to vacate.

Mr. Gossage’s motion to vacate failed to identify under which section of Civil Rule 60(b) he was seeking relief. The bankruptcy court liberally construed the motion to seek relief either pursuant to Civil Rule 60(b)(1) or 60(b)(6), made applicable to bankruptcy through Rule 9024.

Civil Rule 60(b)(1) allows the bankruptcy court broad discretion to “relieve a party or its legal representative from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect.” The decision of whether a party’s failure to meet a deadline qualifies as “excusable neglect” under Civil Rule 60(b)(1) is “an equitable one, taking account of all relevant circumstances surrounding the party's omission.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993). Among the “relevant circumstances” to be considered are [1] the danger of prejudice to the [nonmovant], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith. *Id.* When circumstances causing the delay are squarely within the party’s control, the neglect is not excusable. *Franchise Holding II, LLC, v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 927 (9th Cir. 2004).

Civil Rule 60(b)(6), the so-called "catch-all provision," provides that on motion "the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for . . . any other reason that justifies relief." Relief under Civil Rule 60(b)(6) is the exception, not the rule. Civil Rule 60(b)(6) is to be "used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *U.S. v. Washington*, 394 F.3d 1152, 1157 (9th Cir. 2005) (internal quotation marks and citation omitted), *overruled on other grounds in later appeal*, 593 F.3d 790 (9th Cir. 2010).

Here, Mr. Gossage failed to acknowledge the bankruptcy court's stated reasons and rationale for dismissing his case. Rather, Mr. Gossage focused only on his failure to attend the continued dismissal hearing, asserting that the dismissal should be vacated because he was at a dental appointment—ostensibly arguing that his failure to attend was due to excusable neglect.[5]

As explained multiple times by the bankruptcy court, Mr. Gossage's failure to attend the continued dismissal hearing was not the basis for dismissing his case. Rather, Mr. Gossage's case was dismissed because he

[5] Mr. Gossage's appellate briefs include numerous additional arguments not included in his motion to vacate. Because the bankruptcy court did not have the opportunity to consider the additional arguments, we decline to address them. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (we do not consider arguments and allegations raised for the first time on appeal).

failed to file a feasible plan and notice it for hearing as required by the Last Chance Order, failed to provide all documents required by Trustee, and failed to stay current on plan payments.

The bankruptcy court properly determined that a dental appointment did not meet the "excusable neglect" standard of Civil Rule 60(b)(1) because "[n]either ignorance nor carelessness on the part of the litigant or his attorney provide grounds for relief under [Civil] Rule 60(b)(1)." *Engleson v. Burlington N.R. Co.*, 972 F.2d 1038, 1043 (9th Cir. 1992) (quotation omitted). Nor did it meet the Civil Rule 60(b)(6) standard because the circumstances were neither extraordinary nor beyond his control. *See Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008).
Mr. Gossage's "dissatisfaction or disagreement with a court's judgment does not justify reconsideration[.]" *Evans v. Woodford*, Case No. 1:06-CV-01250 ALA(P), 2008 WL 5114653, at *1 (E.D. Cal. Dec. 4, 2008), *aff'd*, 385 F. App'x 655 (9th Cir. 2010).

CONCLUSION

Based on the foregoing, we AFFIRM.