

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 16 2020

FOR THE NINTH CIRCUIT

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

In re: MARY KAY DUFFIE,

No. 17-36010

Debtor,

D.C. No. 2:15-cv-00034-BMM

MARY KAY DUFFIE,

MEMORANDUM*

Plaintiff-Appellant,

v.

STEVE GOTCHER; SHARON GOTCHER,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Montana
Brian M. Morris, District Judge, Presiding

Submitted April 7, 2020**

Before: TASHIMA, BYBEE, and WATFORD, Circuit Judges.

Mary Kay Duffiè appeals pro se from the district court's order affirming the bankruptcy court's judgment excepting \$88,348.61 for appellees from Duffiè's

* 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).

bankruptcy discharge. We have jurisdiction under 28 U.S.C. §§ 158(d)(1) and 1291. We review de novo a district court's decision on appeal from a bankruptcy court and apply the same standard of review applied by the district court. *In re JTS Corp.*, 617 F.3d 1102, 1109 (9th Cir. 2010). We affirm.

The bankruptcy court properly granted appellees an exception from Duffiè's bankruptcy discharge because appellees demonstrated by a preponderance of the evidence that Duffiè intentionally made false representations to obtain their agreement to make monetary payments to Duffiè; the appellees justifiably relied on those misrepresentations and made such payments; and they sustained damages as a result. *See* 11 U.S.C. § 523(a)(2)(A) (prohibiting the discharge of any enforceable obligation for money, property, services, or credit that was obtained by fraud, false pretenses, or false representations); *In re Sabban*, 600 F.3d 1219, 1221 (9th Cir. 2010) (discussing the five elements a creditor must establish by a preponderance of the evidence to demonstrate a claim of non-dischargeability under § 523(a)(2)(A)).

The bankruptcy court did not abuse its discretion in denying on the basis of appellee Steve Gotcher's demonstrated hearing issues Duffiè's motion to appear at trial via videoconference. *See S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 807 (9th Cir.) (stating standard of review and holding that courts have "inherent power" to control their dockets).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Duffiè's motion to transmit physical exhibits (Docket Entry No. 23) is denied.

AFFIRMED.