

Appellate Jurisdiction
Excusable Neglect
Judicial Notice
Notice of Appeal
Sanctions
FRBP 8020
FRBP 9024
FRCP 60(b)(1)
FRCP 60(b)(6)

Smith v. Webre et. al. 9th Cir. No. 07-35766
In re Geraldine K. Smith Main Case # 697-62183-aer7

5/26/09 9th Circuit Unpublished
Aff'g Radcliffe's letter opinion and order; Aff'g BAP's
Denial of Motion to Reconsider and Grant of Sanctions

The Bankruptcy Court entered an order on Debtor's objection to a claim (Order #1). Debtor moved for reconsideration, which was denied (Order #2). Debtor moved to reconsider Order #2, which was also denied (Order #3). Debtor appealed Order #1 to the Bankruptcy Appellate Panel (BAP), and moved the bankruptcy court for an extension of time to appeal. The motion for extension was denied, (Order #4) (and the BAP dismissed Order #1's appeal as untimely). Debtor moved to reconsider Order #4. The bankruptcy court denied the motion (Order #5). Debtor appealed Order #5.

The BAP affirmed. Debtor moved for reconsideration which was denied. The BAP then imposed sanctions for a frivolous appeal. Debtor appealed all the BAP's rulings.

The 9th Circuit affirmed in all respects. The bankruptcy court did not abuse its discretion in concluding Debtor had not shown excusable neglect under FRCP 60(b)(1) or faultless delay under FRCP 60(b)(6) for her failure to timely file a notice of appeal. The court held it lacked jurisdiction to consider the underlying order Debtor sought to challenge because she failed to timely file a notice of appeal. The court denied Debtor's motion to take judicial notice, noting the briefs filed with the BAP and bankruptcy court were already part of the appellate record and that documents from separate state and federal cases were not relevant to the issues on appeal.

The court held the BAP had not abused its discretion in denying Debtor's motion for reconsideration because the motion merely repeated arguments already considered. Further, the BAP did not abuse its discretion by imposing sanctions because Debtor's briefing before the BAP failed to address the only order from which she timely appealed(i.e. Order #5).

FILED

NOT FOR PUBLICATION

MAY 26 2009

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

In the Matter of: GERALDINE KAY
SMITH,

Debtor,

No. 07-35766

D.C. No. OR-06-01190-BMoH

MEMORANDUM*

GERALDINE KAY SMITH,

Appellant,

v.

FRANK WEBRE; et al.,

Appellees.

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Brandt, Montali, and Hollowell, Bankruptcy Judges, Presiding

Submitted May 12, 2009**

* 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).

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

Geraldine Kay Smith appeals pro se from orders of the Bankruptcy Appellate Panel (“BAP”) affirming the bankruptcy court’s order denying her motion for relief from judgment, denying her motion for reconsideration before the BAP, and imposing sanctions for a frivolous appeal. We have jurisdiction pursuant to 28 U.S.C. § 158(d). We review for abuse of discretion. *Flores v. Arizona*, 516 F.3d 1140, 1163 (9th Cir. 2008) (denial of motion for relief from judgment); *Nat’l Bank of Long Beach v. Donovan (In re Donovan)*, 871 F.2d 807, 808 (9th Cir. 1989) (per curiam) (denial of motion for reconsideration); *Ehrenberg v. Cal. State Univ. (In re Beachport Enter.)*, 396 F.3d 1083, 1086-87 (9th Cir. 2005) (imposition of sanctions). We affirm.

The bankruptcy court did not abuse its discretion by denying Smith’s motion for relief under Rule 60(b)(1) and (6) because her failure to file a timely notice of appeal was neither excusable neglect nor faultless delay. *See Fed. R. Civ. P.* 60(b)(1) (allowing relief for excusable neglect); *Fed. R. Bank. P.* 9024 (applying Rule 60 to bankruptcy proceedings); *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 393 (1993) (allowing relief under Rule 60(b)(6) for faultless delay).

We lack jurisdiction to consider the underlying order that Smith seeks to challenge because she failed to file a timely notice of appeal from that order. *See Flores*, 516 F.3d at 1163 (stating that a timely notice of appeal is a jurisdictional requirement and the failure to file a timely appeal cannot be cured through a Rule 60(b) motion).

The BAP did not abuse its discretion by denying Smith's motion for reconsideration because the motion merely repeated arguments that were already presented to and considered by the BAP. *See Fed. R. Civ. P. 60(b); Fed. R. Bankr. P. 9024.*

The BAP did not abuse its discretion by imposing sanctions for a frivolous appeal on the basis that Smith's briefing failed to address the only bankruptcy court order from which she timely appealed, the denial of her Rule 60 motion. *See Fed. R. Bankr. P. 8020.*

Smith's motion to take judicial notice is denied. The briefs filed with the BAP and the bankruptcy court in this case are already part of the record on appeal. The documents from separate state and federal cases are not relevant to the issues on appeal. *See Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d

1022, 1025 n.2 (9th Cir. 2006) (declining to take judicial notice of documents that were not relevant to the resolution of the appeal).

Smith's remaining contentions are unpersuasive.

AFFIRMED.