IN THE SUPREME COURT
OF THE UNITED STATES

JAMES J. BAGWELL, Petitioner, v. **BANK OF AMERICA, N.A.**, Respondent.	Case No.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MOTION TO DIRECT THE CLERK TO FILE PETITION NOTWITHSTANDING OUT OF TIME

James J. Bagwell, pro se

315 Junction Track

Roswell, Georgia 30075

770-715-9745

REQUEST FOR PRO SE UNDERSTANDING

Comes now James J. Bagwell, the pro se crime victim petitioner to request the U.S. Supreme Court to exercise extraordinary understanding on behalf of the pro se petitioner and direct the clerk to file the petition, notwithstanding that the clerk determined that the petition was out of time.

The pro se petitioner made every effort to file the petition according to the rules as much as he could understand. In addition, the pro se petitioner contacted the clerk's office at the U.S. Court of Appeals to determine the correct date to file the petition with the U.S. Supreme Court and the pro se petitioner was told that the correct date to file the petition was by April 24, since the judgment of the U.S. Court of Appeals was included on that date. The petitioner again verified with the representative at the clerk's office that it was April 24, as opposed to April 16, and the representative confirmed that the April 24 "definitely" was the date to use.

In addition, the mandate document was the first time that the pro se petitioner had seen the judgment or been made aware that a judgment was issued by the Court of Appeals, as evidenced that the judgment was not included in the copy of the original decision opinion received by the pro se petitioner. In speaking with the U.S. Supreme Court clerk representative after her determination that the petition was out of time, she told the pro se petitioner that a judgment was actually entered into the docket system as a separate document. Since the pro se petitioner does not have access to view the system, since it is by paid subscription only, the pro se petitioner did not know that a judgment document had been issued and posted to the system, since the pro se petitioner never received a copy of the judgment document in U.S. Mail.

Since, the pro se petitioner made every effort to conform to the rules of the court regarding the proper filing date, as much as he could be expected to, as compared to a

professional attorney, we pray that the Supreme Court will grant this motion to direct the clerk to file the petition to prevent even further injustice being served, since he was both given incorrect information and never received the judgment document that was originally entered into the system.

The pro se Appellant appreciates the Court's understanding of the pro se Appellant's learning of the court processes and procedures. The courts have ruled that "courts do and should show a leniency to pro se litigants not enjoyed by those with the benefit of a legal education. (See Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008); Tannenbaum v. United States 148 F.3d 1262, 1263 (11th Cir. 1998); Powell v. Lennon, 914 F.2d 1459, 1463 (11th Cir. 1990).

This is especially appreciated in the situation of pro se Debtors in Bankruptcy, since very limited funds are available to be used in these matters.

CONCLUSION

For the all of the foregoing reasons, the Petitioner crime victim respectfully prays and urges this U.S. Supreme Court to reconsider and grant his Motion to Direct the Clerk to File the Petition Notwithstanding Out of Time, in order to insure that fairness and justice in these matters is available for both the pro se petitioner crime victim and many current and future homeowners.

Thank you for your extraordinary understanding in this matter.

James J. Bagwell

James J. Bagwell, pro se

315 Junction Track

Roswell, GA 30075

770-715-9745

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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January 24, 2019

Clerk - Northern District of Georgia
Richard B. Russell Bldg & US Courthouse
2211 UNITED STATES COURTHOUSE
75 TED TURNER DR SW
STE 2211
ATLANTA, GA 30303-3309

Appeal Number: 18-10467-AA
Case Style: James Bagwell v. Bank of America, N.A.
District Court Docket No: 1:17-cv-00539-LMM
Secondary Case Number: 16-bkc-59986-MGD

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Lois Tunstall
Phone #: (404) 335-6191

Enclosure(s)

MDT-1 Letter Issuing Mandate

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 18-10467

District Court Docket No.
1:17-cv-00539-LMM,
Bkcy No. 16-bkc-59986-MGD

In re:

JAMES JOSEPH BAGWELL,

Debtor.

JAMES JOSEPH BAGWELL,

Plaintiff - Appellant,

versus

BANK OF AMERICA, N.A.,

Defendant - Appellee.

Appeal from the United States District Court for the
Northern District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: October 23, 2018
For the Court: DAVID J. SMITH, Clerk of Court
By: Djuanna Clark

ISSUED AS MANDATE 01/24/2019

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10467-AA

In re:

JAMES JOSEPH BAGWELL,

Debtor.

JAMES JOSEPH BAGWELL,

Plaintiff - Appellant,

versus

BANK OF AMERICA, N.A.,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

BEFORE: WILSON, MARTIN, and JULIE CARNES, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Appellant James Joseph Bagwell is DENIED.

ENTERED FOR THE COURT:

Robert B. Martin

UNITED STATES CIRCUIT JUDGE

ORD-41

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10467-AA

In re:

JAMES JOSEPH BAGWELL,

Debtor.

JAMES JOSEPH BAGWELL,

Plaintiff - Appellant,

versus

BANK OF AMERICA, N.A.,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, MARTIN, and JULIE CARNES, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

Beverly B. Martin

UNITED STATES CIRCUIT JUDGE

ORD-42

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10467
Non-Argument Calendar

D.C. Docket No. 1:17-cv-00539-LMM,
Bkcy No. 16-bkc-59986-MGD

In re:

JAMES JOSEPH BAGWELL,

Debtor.

JAMES JOSEPH BAGWELL,

Plaintiff-Appellant,

versus

BANK OF AMERICA, N.A.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(October 23, 2018)

Before WILSON, MARTIN, and JULIE CARNES, Circuit Judges.

PER CURIAM:

James Joseph Bagwell, a Chapter 7 debtor representing himself, appeals a district court judgment affirming the orders of the bankruptcy court. Bagwell's appeal implicates two bankruptcy court orders. One of them granted Bank of America, N.A.'s motion for relief from the automatic stay imposed under 11 U.S.C. § 362. The other denied Bagwell's ensuing motion, which sought among other things, the withdrawal of the first order and the reinstatement of the stay. Bagwell's appeal raises substantive and procedural challenges to both orders. After careful review, we conclude that the Bankruptcy Court did not abuse its discretion in either order. We therefore affirm the district court's order.

I. BACKGROUND

Bagwell filed for bankruptcy under Chapter 13 of the Bankruptcy Code in June 2016. Two months later and at Bagwell's request, the bankruptcy court converted his Chapter 13 case into a Chapter 7 case. The Bankruptcy Code's automatic stay provision, 11 U.S.C. § 362, which applies to proceedings under both Chapter 7 and Chapter 13, see 11 U.S.C. § 103, went into effect when Bagwell filed his petition. The stay provision temporarily prevents most collection actions against debtors who file for bankruptcy and their property. 11 U.S.C. § 362(a)–(b).

Bank of America, the first mortgage holder for a loan on Bagwell's condominium, moved under 11 U.S.C. § 362(d)(2) for relief from the automatic stay. Bank of America's motion included several exhibits, a notice of hearing, and certificates of service for the motion and notice of hearing. Each certificate of service verified that Bagwell had been served at his address of record. Bagwell's address in the certificates is the same address he gave when he filed for bankruptcy and has used throughout these proceedings

Bagwell filed no response to Bank of America's motion. Neither did he appear at the hearing. The bankruptcy court granted Bank of America's motion and modified the stay to allow Bank of America to foreclose on Bagwell's condominium. A copy of the order was mailed to Bagwell at his address of record.

Eleven days later, Bagwell filed what he called a "Motion to Withdraw, Vacate, or Modify Order[;] Motion to Reinstate Automatic Stay[;] Motion to Reset Hearing[;] Motion to Compel Service of Process[;] Motion for Injunction of Foreclosure; Motion to Restrain Creditor Action." In this filing, Bagwell said he never received Bank of America's motion for relief from stay or its notice of hearing. He asked the bankruptcy court to therefore (1) withdraw its earlier order, (2) reinstate the stay in full, (3) order that he be served with the Bank of America motion, and (4) set a new hearing date for that motion to give him time to respond.

After a hearing in which this time both sides appeared, the bankruptcy court denied Bagwell's motion in a written order. The court analyzed his motion as a motion for reconsideration and found that Bagwell had not met the standard for reconsideration. As for the service issue, the court said:

> In [his] motion, Debtor [Bagwell] asserts that he was not served with the motion for relief. But the certificate of service accompanying the motion lists Debtor's correct address as having been served. Further, even if Debtor had not properly been served, he has not presented a meritorious defense to the motion for relief.

Unlike the order on Bank of America's motion for relief from stay, the order on Bagwell's motion was signed by the bankruptcy court's Chief Judge, rather than the bankruptcy judge assigned to Bagwell's case.

On appeal, the district court affirmed the bankruptcy court. Bagwell timely filed a notice of appeal to this Court.[1]

II. STANDARDS OF REVIEW

In a bankruptcy appeal, we sit as a second court of review of the bankruptcy court's orders. In re St. Laurent, 991 F.2d 672, 675 (11th Cir. 1993); see also 28 U.S.C. § 158(d)(1). In this role, we review the decisions of both the district court and the bankruptcy court. In re Williams, 216 F.3d 1295, 1296 (11th Cir. 2000) (per curiam). We review de novo the district court's order. Id. We independently

[1] Bagwell's notice and amended notice of appeal reference a district court order denying a motion for reconsideration. Bagwell doesn't challenge that order in his briefs, so we do not discuss it further here. See Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam).

review the bankruptcy court's factual and legal determinations, using the same standards of review as the district court. In re Mitchell, 633 F.3d 1319, 1326 (11th Cir. 2011).

We review de novo the bankruptcy court's conclusions of law and its factual findings for clear error. Id. We review a bankruptcy court decision lifting the automatic stay for abuse of discretion. In re Dixie Broad., Inc., 871 F.2d 1023, 1026 (11th Cir. 1989). Abuse of discretion is likewise the standard we apply when reviewing the denial of a motion for reconsideration unless the motion concerns a void judgment. In re Worldwide Web Sys., Inc., 328 F.3d 1291, 1295 (11th Cir. 2003); see also Fed. R. Bankr. P. 9024 (providing the grounds for reconsideration under the Bankruptcy Code as under Federal Rule of Civil Procedure 60). An abuse of discretion occurs when a court uses an incorrect legal standard, applies the law in an unreasonable or incorrect manner, misconstrues its proper role, follows improper procedures in making a determination, or makes clearly erroneous findings of fact. Sciarretta v. Lincoln Nat. Life Ins. Co., 778 F.3d 1205, 1212 (11th Cir. 2015).

Though we read a pro se party's briefs liberally, we do not consider arguments not briefed on appeal or raised for the first time in a reply brief. See Timson, 518 F.3d at 874 (citation omitted).

III. REQUEST TO SUPPLEMENT THE RECORD

The person bringing the appeal has the burden of ensuring the record provides all the evidence he relies on in his claims. See, e.g., TranSouth Financial Corp. v. Johnson, 931 F.2d 1505, 1506 n.2 (11th Cir. 1991); Fed R. App. P. 10. When an appellant's claim turns on what happened at a hearing, the appellant must provide a transcript of the hearing if it is available. See Fed R. App. P. 10(a)–(b). If no transcript is available, the appellant must prepare a statement "of the evidence or proceedings from the best available means, including the appellant's recollection." See Fed R. App. P. 10(b)(2)–(c). Appellants bear this responsibility even when they are proceeding pro se and in forma pauperis. See Loren v. Sasser, 309 F.3d 1296, 1304 (11th Cir. 2002) (per curiam) (holding the duty to provide transcript on appeal applies to pro se litigants); Richardson v. Henry, 902 F.2d 414, 415-16 (5th Cir. 1990) (cited with approval in Loren, 309 F.3d at 1304) (holding that inability to pay does not excuse the failure to provide transcripts); cf. 28 U.S.C. § 753(f) (when a district court grants a litigant's request to sue in forma pauperis, that litigant has the right to request transcripts paid for by the United States government).

The district court order affirming the bankruptcy court mentioned Bagwell's duty to provide relevant transcripts on appeal. Still, Bagwell failed to include a transcript or a statement describing a hearing in the record he gave this Court

several months later. It was only after Bank of America filed its brief, which repeatedly highlights the deficiencies of the appellate record, that Bagwell asked for leave to add a transcript to the record. Even then, Bagwell did not give a satisfactory explanation for his failure to file a complete record in the first place. What's more, he doesn't indicate what a transcript would show or how that showing would affect our analysis. Perhaps most important, since it is our analysis that the bankruptcy court merely followed the mandates of the Bankruptcy Code when it granted Bank of America relief from stay, the hearing transcript will be of no aid to us in this appeal. Bagwell's request to supplement the record is DENIED.

IV. DISCUSSION

A. ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

1. Procedures Involved

Regarding the first order Bagwell asks us to review, he claims that the procedures the bankruptcy court followed in deciding Bank of America's motion were improper and deprived him of his constitutional rights.[2] Specifically, Bagwell argues the bankruptcy court abused its discretion by allowing another

[2] Throughout his briefs, Bagwell mentions his rights to equal protection and due process. However, even with our liberal reading of his briefs, we have been unable to identify the basis for a constitutional equal protection claim. See e.g., Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265, 97 S. Ct. 555, 563 (1977). We therefore analyze his constitutional arguments as due process challenges only.

party in the case to set the hearing on its own motion and serve its motion and notice of hearing on Bagwell.

Bagwell has pointed to no fact or law that the bankruptcy court's procedures on hearings and notice are not "reasonably calculated to reach interested parties." See Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 318, 70 S. Ct. 652, 659 (1950). We note that the procedures Bagwell deems defective comply with the publicly available rules in effect at the bankruptcy court. See, e.g., Fed. R. Bankr. P. 9014(b); Fed. R. Bankr. P. 7004(b)(9); Fed. R. Bankr. P. 9006(e); Fed. R. Civ. P. 5(b)(2)(C). And beyond that, Bagwell has failed to support his argument that the bankruptcy court's decision relied on procedures that violated his due process rights or were otherwise improper.

2. Merits Determination

Many of Bagwell's arguments also appear to assume the order granting Bank of America relief from stay under 11 U.S.C. § 362(d)(2) was substantively improper. However, Section 362(d)(2) requires a court to lift a stay affecting a debtor's property if "the debtor does not have an equity" in the property and the property "is not necessary to an effective reorganization." A creditor who shows those two elements are met is entitled to relief. In re Albany Partners, Ltd., 749 F.2d 670, 673 (11th Cir. 1984). And regarding the second element, we have said that property is "necessary to an effective reorganization" only when a debtor

"demonstrate[s] that an effective reorganization is realistically possible; the mere fact that the property is indispensable to the debtor's survival is insufficient." Id. at 673 n.7.

Here, Bank of America argued that both statutory elements were met, and a number of exhibits support its position that Bagwell had no equity in the condominium. Bagwell, who did not participate in these proceedings, failed to rebut Bank of America's evidence or demonstrate that his condominium was necessary to a realistically possible and effective organization. So under the relevant legal framework, the bankruptcy court did not abuse its discretion by granting Bank of America's motion and modifying the stay.

B. ORDER REFUSING TO REINSTATE THE STAY

1. Procedures Involved

As to the bankruptcy court's order on Bagwell's motion to reinstate the stay, Bagwell again alleges a procedural defect. This time, Bagwell challenges the lawfulness of allowing the Chief Judge of the bankruptcy court to rule on his motion instead of the judge assigned to his case. Like Bagwell's other procedural arguments, this challenge fails because it lacks support.

Bagwell provides no authority for the idea that all judge substitutions are unconstitutional as a matter of law. But Bagwell suggests the judge substitution in his case was improper because it allowed a judge to rule on his motion without

knowing enough about the matter on which she ruled. Yet we have identified no error of fact or law in the ruling to deny Bagwell's motion. This indicates to us the ruling judge had a sufficient grasp of the relevant matter. We see no basis for concluding that the substitution of judges here was improper.

2. Merits Determination

Bagwell essentially argues that the court's refusal to reinstate relied on several determinations that were improper because Bagwell said he had not been served.

To start, Bagwell suggests that, because he says he never received Bank of America's motion in the first place, it was unfair to decide his motion using a motion for reconsideration standard. Yet as a general rule, lack of service may be a basis for reconsideration. See, e.g., Fed. R. Civ. P. 60(b)(4) (standard for reconsiderations of void judgments, including because of lack of service of process). As for Bagwell's argument that his motion does not mention reconsideration, the bankruptcy court correctly applied the standard that fit the purpose of Bagwell's motion. Though Bagwell did not expressly ask the court to revisit its earlier ruling, the relief he requested only made sense if the bankruptcy court revisited its earlier ruling. The bankruptcy court was therefore within its discretion to assess Bagwell's motion under the standard for reconsideration and to require him to show he was entitled to this extraordinary remedy.

Bagwell's other merits arguments challenge the two reasons the bankruptcy court gave for denying reconsideration. However, either one of those reasons was independently sufficient to support the bankruptcy court's decision. First, the court found Bagwell failed to show he had not been served with Bank of America's motion and notice of hearing. Indeed while Bagwell produced no evidence to support his claim that he was not served, Bank of America had evidence that he was. So as the district court correctly observed, the bankruptcy court's finding that Bagwell was served cannot be deemed clear error.

Second, the bankruptcy court determined that, even if Bagwell had not been served, reconsideration was not appropriate because he failed to address the plain requirements of § 362(d)(2). In this regard, Bagwell relies on many considerations that, based on the record, he never mentioned to the bankruptcy court. The bankruptcy court could not have abused its discretion by failing to take into account any consideration about which it did not know. True, there is one matter Bagwell discusses here that he also mentioned in at least some bankruptcy proceedings: his hopes of using his bankruptcy to prevent the foreclosure on his condominium and seek refinancing. But however understandable Bagwell's hopes might be, they have little if any significance in Chapter 7 liquidation proceedings and they are not legally relevant under § 362(d)(2). See In re Albany, 749 F.2d at 673 n.7. Again here, the bankruptcy court did not err in finding that Bagwell had

no meritorious defense under § 362(d)(2). The bankruptcy court acted in accord with the statute when it refused to reinstate the stay.

C. REMAINING ISSUES

Bagwell argues that the errors he mentions in his briefs also cumulatively constitute a denial of due process and equal protection, justifying sanctions against Bank of America's lawyers. Because Bagwell has shown no error at all, this argument fails as well.

V. CONCLUSION

Because the record before us is sufficient to decide all the issues presented in Bagwell's appeal, we DENY Bagwell's request to supplement the record. We also DENY his request for sanctions against Bank of America's lawyers insofar as he has not shown that the actions of any Bank of America lawyer warrant sanctions.

Having independently reviewed the bankruptcy court orders and the record before us, we agree with the district court that the bankruptcy court did not abuse its discretion in lifting or refusing to reinstate the stay. The district court's judgment affirming the bankruptcy court is

AFFIRMED.

Additional material from this filing is available in the Clerk's Office.