UNITED STATES SUPREME COURT

ON PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT

APPENDIX

AVA ELECTRIS CANNIE,

Petitioner-Debtor,

versus

JGCC PROPERTY OWNERS' ASSOCIATION, INC

Respondent -Creditor

US Court of Appeals Eleventh Circuit -23-11705

US Middle District Court of Florida Jacksonville 3:22-cv-1022

US Bankruptcy Court Middle District Jacksonville 3:10-bk-07291

US Court of Appeals Eleventh Circuit AFFIRMED May 30,2024

Rehear 11th US Circuit Court of Appeals DENIED June 25, 2024

Mandate of Final Judgment July 3, 2024, by 3 panel of judges:

Judge Newson, Judge Branch and Judge Anderson per 28 US Code 2101c

AVA ELECTRIS CANNIE aka EVA HELENE CANNIE

/S/Ava Electris Cannie aka Eva Helene Cannie

12959 Hunt Club Road N Jacksonville Florida 32224

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EXHIBIT A

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 23-11705

Non-Argument Calendar

In re: AVA ELECTRIS CANNIE,

Debtor.

AVA ELECTRIS CANNIE,
a.k.a. Eva Helene Cannie,
d.b.a. Country Club Merchant Magazine,

Plaintiff-Appellant,

versus

JACKSONVILLE GOLF & COUNTRY CLUB PROPERTY OWNERS ASSOCIATION, INC.,
JGCC POA,
JGCC PROPERTY OWNERS ASSOCIATION, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:22-cv-01022-BJD

Before NEWSOM, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

Ava Cannie, proceeding *pro se*, seeks sanctions against Jacksonville Golf & Country Club Property Owners Association ("JGCC") for pursuing "post-petition fees" outside of her bankruptcy proceedings. The bankruptcy court denied the motion on the merits and *res judicata* grounds, and the district court affirmed. Cannie's brief in this court argues the merits of her claim, but it fails to contest the bankruptcy court's independently sufficient ruling that her arguments are barred by *res judicata*. While she ultimately joins the issue in her reply brief, that is insufficient under our well-settled standards of appellate review. We therefore affirm as well.

I. Background

Cannie filed a voluntary Chapter 13 bankruptcy petition, listing JGCC as one of her creditors. After the case was dismissed and reinstated and dismissed again, the bankruptcy court issued an

order protecting JGCC's interests because JGCC had a deed to the property it claimed an interest in.

The bankruptcy court reopened the case a second time, and JGCC filed a secured proof of post-petition fees and expenses. The bankruptcy court overruled the objection, relying on the order protecting JGCC's interests and explaining that Cannie could not challenge those rulings under *res judicata* and collateral estoppel.

JGCC then filed a motion for relief from the automatic stay[1] to permit it to seek the post-petition fees outside the plan. JGCC explained that Cannie had not paid the post-petition fees outside the plan, as agreed, and that it wanted to file a lien to acquire those fees. The bankruptcy court lifted the automatic stay as JGCC requested. As a result of this permission to pursue post-petition fees under Florida law, JGCC withdrew its post-petition claims from the bankruptcy proceeding.

Later, the bankruptcy court confirmed the proposed Chapter 13 plan. The bankruptcy court said that post-petition costs or other expenses incurred by a secured creditor would be "discharged upon [Cannie's] completion of the plan, unless specifically provided for in this order, or by further order of Court"

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[1] "The automatic stay is a fundamental procedural mechanism" that "facilitates the orderly administration and distribution of the estate by protecting the bankrupt's estate from being eaten away by creditors' lawsuits . . . before the trustee has had a chance to marshal the estate's assets and distribute them equitably among the creditors." *In re Diaz*, 647 F.3d 1073, 1085 (11th Cir. 2011) (alterations accepted) (quotation omitted).

and that "this provision specifically supersedes all language in any confirmed plan that states differently." The confirmed plan stated that JGCC's claim for post-petition fees and costs "will not be provided for in the terms of the plan; will be resolved directly between Debtor and Creditor."

JGCC objected to the discharge language, arguing that it was a scrivener's error or form language that did not apply under the circumstances. Cannie, in addition to responding to JGCC, filed a motion for sanctions against JGCC. JGCC withdrew its objection to the confirmed plan, and Cannie withdrew her motion for sanctions.

After Cannie completed her Chapter 13 plan and the bankruptcy court granted her a discharge, Cannie sought to reopen her case and move for sanctions because JGCC continued to seek repayment of fees. After the court agreed, the case was closed and re-opened once more, with Cannie filing additional motions for sanctions. JGCC argued, among other things, that the court order overruling Cannie's objection to its earlier claim and lifting the automatic stay had already ruled that it was entitled to post-petition fees and costs, and that the doctrine of *res judicata* barred Cannie from relitigating this issue.

The bankruptcy court denied Cannie's motion for sanctions. Two aspects of that ruling are pertinent. First, the bankruptcy court held that the confirmed plan expressly did not provide for JGCC's post-petition claim, including its post-petition attorneys' fees. Therefore, JGCC's "postpetition claim was not discharged

because the . . . plan did not provide for it." Second, "[a]s a separate and independent basis for denial," the court also determined that *res judicata* barred Cannie's claim because the bankruptcy court had already specifically overruled Cannie's objection to JGCC's claim for post-petition fees.

Cannie filed a motion for rehearing, which the bankruptcy court denied because Cannie failed to reference a change in controlling law or present new evidence.

Cannie appealed to the United States District Court for the Middle District of Florida. She filed her *pro se* brief and argued that the confirmation order superseded the confirmed plan and any language in it. She also argued that her claims were not barred by *res judicata* because she could not have raised a claim that JGCC violated the discharge order before the order was issued. The district court at first dismissed Cannie's appeal for lack of jurisdiction because she failed to timely file her appeal, but later reconsidered that decision, and affirmed the bankruptcy court's conclusions on the merits.[2] Cannie asked the district court to reconsider once more, but it declined.

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[2] The district court apparently believed that Cannie "[did] not dispute the Bankruptcy Court's analysis regarding whether her claim [was] barred by *res judicata*[, i]nstead . . . disput[ing] whether . . . [JGCC] was permitted to seek postpetition attorney's fees." Reviewing Cannie's district court brief, we are skeptical of that reading—but because what matters is the preservation of issues before this court, whether the issue was *also* abandoned before the district court is inconsequential.

Cannie appealed to this Court.

II. Discussion

Cannie argues that the bankruptcy court abused its discretion in denying her motion for sanctions against JGCC because JGCC pursued fees from her despite the Chapter 13 confirmation order stating that post-petition fees would be discharged upon completion of the plan. But Cannie failed in her opening brief to challenge the bankruptcy court's alternative holding—that Cannie's arguments were barred by *res judicata*.[3] Thus, that ground for decision stands unopposed, and we affirm.

"To obtain reversal of a [lower] court judgment that is based on multiple, independent grounds, an appellant must convince us that every stated ground for the judgment . . . is incorrect. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014). So "[w]hen an appellant fails to challenge properly on appeal one of the grounds on which the [lower] court based its judgment, [s]he is deemed to have abandoned any challenge of that ground, and it follows that the judgment is due to be affirmed." *Id.*

Here, Cannie does not contest the *res judicata* ruling in her opening brief. *See Sapuppo*, 739 F.3d at 681–83 (affirming the district court's judgment because appellants "abandoned any

[3] Cannie does mention *res judicata* in her brief, but only to suggest that *JGCC*'s arguments about the confirmed plan were barred by *res judicata*. She does not argue that (let alone show why) the district court erred in concluding that *her* argument was barred by *res judicata*.

argument they may have had that the district court erred in its alternative holdings"). Thus, under our well-settled standards of appellate review, she has failed to challenge the bankruptcy court's ruling on that issue. *Id.* at 680.

Cannie does join the issue in her reply brief, but "[t]hose arguments come too late." *Id.* at 683. We routinely "decline to address an argument advanced by an appellant for the first time in a reply brief." *Big Top Koolers, Inc. v. Circus–Man Snacks, Inc.*, 528 F.3d 839, 844 (11th Cir. 2008); *United States v. Levy*, 379 F.3d 1241, 1244 (11th Cir. 2004) (explaining that we have "repeatedly . . . refused to consider issues raised for the first time in an appellant's reply brief."). Even for *pro se* litigants, *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008), "[p]resenting [an] argument in the . . . reply brief does not somehow resurrect it," *Davis v. Coca–Cola Bottling Company*, 516 F.3d 955, 972 (11th Cir. 2008).

Thus, and because the *res judicata* ruling was "a separate and independent basis" for denying Cannie's motion for sanctions, her failure to challenge that ruling is enough to resolve this appeal. *Sapuppo*, 739 F.3d at 680.

AFFIRMED.

EXHIBIT B

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11705

In re: AVA ELECTRIS CANNIE,

Debtor.

AVA ELECTRIS CANNIE,
a.k.a. Eva Helene Cannie,
d.b.a. Country Club Merchant Magazine,

Plaintiff-Appellant,

versus

JACKSONVILLE GOLF & COUNTRY CLUB PROPERTY OWNERS ASSOCIATION, INC.,
JGCC POA,
JGCC PROPERTY OWNERS ASSOCIATION, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:22-cv-01022-BJD

Before NEWSOM, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Appellant Ava Electris Cannie is DENIED.

EXHIBIT C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

AVA ELECTRIS CANNIE aka Eva Helene Cannie, dba County Club Merchant Magazine,

Appellant,

v. Case No. 3:22-cv-1022-BJD

JACKSONVILLE GOLF & COUNTRY CLUB PROPERTY OWNERS ASSOCIATION, INC., JGCC POA, JGCC PROPERTY OWNERS ASSOCIATION, INC., and JGCC PROPERTY OWNERS ASSOCIATION, INC.,

Appellees.
_____/

ORDER

THIS CAUSE is before the Court on Appellant's Motion (Doc. 25) which asks the Court to reconsider its Order dismissing this case for lack of jurisdiction (Doc. 23).

A. Motion to Reconsider

The Federal Rules of Civil Procedure (Rules) prescribe two ways a party can seek review of a judgment entered against it absent an appeal to the Circuit Court. Rule 59(e) allows a district court to alter or amend a judgment if reconsideration is sought within twenty-eight days of judgment

being entered, though such a motion will be granted only if there is newly discovered evidence, or the district court made a manifest error of law or fact. See Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007). Rule 60 allows a court to relieve a party from a judgment or order because of mistake, inadvertence, surprise, excusable neglect, or for any other reason that justifies relief and is not burdened by the same time constraints in Rule 59. See Rice v. Ford Motor Co., 88 F.3d 914, 918 (11th Cir. 1996).

The Eleventh Circuit has determined "a motion to reconsider is a limited remedy that should be used sparingly, and not to 'set forth new theories of law' or relitigate issues that have already been considered by the court." Watkins v. Johnson, 853 F. App'x 455, 459 n.5 (11th. Cir. 2021) (citing Mays v. U.S. Postal Serv., 122 F.3d 43, 46 (11th Cir. 1997).

Appellant is correct when she argues that her appeal was timely filed on September 10, 2022. This Court did not receive Appellant's appeal until September 19, 2022. (See Doc. 1). The bankruptcy clerk's office received the appeal on September 10, 2022, and for reasons unknown, the Clerk's Office for the district court did not file the appeal with this Court until September 21, 2022 and backdated the filing to September 19, 2022.

"Federal courts have limited subject matter jurisdiction[, meaning] they have the power to decide only certain types of cases." Morrison v. Allstate Indem. Co., 228 F.3d 1255, 1260–61 (11th Cir. 2000). District courts "can

exercise this power only over cases for which there has been a congressional grant of jurisdiction[.]" Smith v. GTW Corp., 236 F.3d 1292, 1299 (11th Cir. 2001).

Federal district courts, such as this one, act as appellate courts in reviewing final orders and judgments of the bankruptcy courts. Wellness Int'l Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1940 (2015) (quoting 28 U.S.C. 157(b)(1)) ("Congress gave bankruptcy courts the power to 'hear and determine' core proceedings and to 'enter appropriate orders and judgments,' subject to appellate review by the district court."); see also In re Williams, 216 F.3d 1295, 1296 (11th Cir. 2000) ("The district court in a bankruptcy appeal functions as an appellate court in reviewing the bankruptcy court's decision."). "In a bankruptcy case, an order is final and appealable if it resolves a particular adversary proceeding or controversy rather than the entire bankruptcy litigation." In Re: C.D. Jones & Co., Inc., 658 F. App'x 1000, 1001 (11th Cir. 2016) (internal quotations omitted).

"Rule 8002(a) of the Federal Rules of Bankruptcy Procedure provides that a notice of appeal must be filed 'within [14] days of the date of the entry of the judgment, order, or decree appealed from.'" In re Williams, 216 F.3d 1295, 1296 (11th Cir. 2000) (quoting Fed. R. Bankr. P. 8002(a)). "When a party files a timely motion for reconsideration, the time to file a notice of appeal runs from the date of the entry of the order disposing of the motion."

In re A & S Ent., LLC, No. 22-12048, 2022 WL 17752234, at *2 (11th Cir. 2022) (citing Fed. R. Bankr. P. 8002(b); 28 U.S.C. § 158 (c)(2)).

Here, there are four relevant dates to help the Court explain its jurisdiction. The Bankruptcy Court entered a sanctions order on August 9, 2022. (Doc. 1 at 1, 3). Then, Appellant filed a motion with the Bankruptcy Court for it to reconsider its sanctions order on August 22, 2022. (Docs. 14 at 13; 25 at 3). The Bankruptcy Court denied Appellant's motion to reconsider on September 2, 2022. (Doc. 1.2). Appellant then filed a notice of appeal of both the sanctions order and the reconsideration order on September 10, 2022. (See Doc. 1 at 1) (showing Appellant filed her appeal with the bankruptcy court on September 10, 2022, but that the district court docketed the appeal on September 19, 2022).

This Court has jurisdiction to hear Appellant's appeal of the Bankruptcy Court's orders. Appellant timely filed her appeal eight days after the Bankruptcy Court denied her motion to reconsider its sanctions order. See In re A & S Ent., LLC, 2022 WL 17752234, at *2; Fed. R. Bankr. P. 8002(a)–(b).

B. The Merits of Appellant's Appeal

a. Background

Appellant appeals the Bankruptcy Court's September 2, 2022 Order Denying Debtor's Motion for Rehearing (Doc. 1.2). The order followed the

bankruptcy court's previous denial of Appellant's motion for sanctions, an order entered on August 9, 2022. (Doc. 10.390).

Appellant filed the underlying bankruptcy case under Chapter 13 on August 20, 2010. (Doc. 9.7). The Bankruptcy Court describes the history of bankruptcy litigation Appellant has brought, including four previous petitions for relief under Chapter 13. (See Doc. 1 at 4–7). Relevant to this appeal, on May 7, 2012, Appellee filed a Notice of Postpetition Fees related to a previous claim in the Chapter 13 Plan. Id. at 5. Appellant objected to Appellee's Notice. Id. On August 9, 2012, the Bankruptcy Court ruled in favor of Appellee and determined:

> (i) The principles of *res judicata* and collateral estoppel bar the [Appellant] from continuing to contest the status of [Appellee's] claim.
> (ii) [Appellee] is entitled to rely upon the Court's prior rulings.
> (iii) [Appellee] acted reasonably in hiring counsel to protect its rights where the [Appellant] attempted to modify those rights through her plan.
> (iv) The [Appellant] must pay [Appellee] for postpetition debt, including, without limitation, assessment, interest, late fees, and attorney's fees.

Id.; (See also Doc. 9.301) (providing the original bankruptcy court order overruling Appellant's objection).

On December 19, 2012, the Bankruptcy Court entered an order that confirmed the Chapter 13 Plan, providing in part that

> Any post petition costs or expenses incurred by or on behalf of any secured creditor will be discharged upon the Debtor's completion of the plan, unless specifically provided for in this order, or by further order of Court on motion filed prior to completion of the plan. Regardless of objection by the creditor, this provision specifically supersedes all language in any confirmed plan that states differently.

(Doc. 1 at 6); (See also Doc. 9.382 at 2). Additionally, the Bankruptcy Court noted that Appellee's postpetition fees and costs, which were filed on May 17, 2012 would "be resolved directly between" Appellant and Appellee. (Doc. 1 at 6); (See also Doc. 9.382 at 7).

By 2015, Appellant completed her Chapter 13 Plan and received a discharge. (Docs. 1 at 6; 10.192). Since the discharge, Appellant has tried to reopen her case to pursue sanctions against her creditors, including Appellee. (Doc. 1 at 6–7). In 2022, the Bankruptcy Court reopened the case "for the limited purpose of determining whether [Appellee] is in contempt for violating the discharge injunction and if sanctions are appropriate." (Doc. 10.297 at 1). This limited decision is the origin of the appeal before the Court.

The Bankruptcy Court held a trial on Appellant's two motions for order of contempt and sanctions. (Doc. 1 at 3). Appellant sought sanctions against Appellee "for asserting postpetition attorney's fees in violation of the discharge injunction." Id. The Bankruptcy Court concluded that Appellee's request for postpetition attorney's fees were not discharged through the

bankruptcy proceedings and that *res judicata* barred Appellant "from bringing claims already adjudicated by" the Bankruptcy Court. Id. at 4.[1]

b. Discussion

Federal district courts act as appellate courts in reviewing final orders and judgments of federal bankruptcy courts. 28 U.S.C. § 158(a). This Court evaluates the bankruptcy court's legal conclusions de novo and its factual findings for clear error. See In re Daughtrey, 896 F.3d 1255, 1273 (11th Cir. 2018).

To begin, the Court finds no clear error in the factual record provided by the court below. The Bankruptcy Court relied on previous orders to provide the timeline of events giving rise to events in this appeal. Appellant does not dispute the timeline provided by the Court; instead, she objects to the ultimate legal conclusion the Bankruptcy court made. (See generally Doc. 12).

Federal law provides the rules and guidelines for bankruptcy proceedings from filing to discharged. Under 11 U.S.C. § 1328(a), after a debtor completes all payments under their plan, then a bankruptcy court

[1] Appellant does not dispute the Bankruptcy Court's analysis regarding whether her claim is barred by *res judicata*. Instead, she disputes whether overall Appellee was permitted to seek postpetition attorney's fees. See Doc. 12 at 18–19. Accordingly, this Court will not review the Bankruptcy Court's analysis regarding claim preclusion.

"shall grant the debtor a discharge of all debts provided for by the plan or disallowed under [11 U.S.C. §] 502[.]"

The Eleventh Circuit has explained whether a fee to be paid outside of a bankruptcy plan is "provided for" by the plan and would then be discharged at the same time the entire plan is discharged. In re Dukes, 909 F.3d 1306, 1313 (11th Cir. 2018). In Dukes, the Eleventh Circuit evaluated whether a credit union's mortgage, referenced within the bankruptcy plan "as being paid outside" of that plan, was discharged once the debtor completed all of her payments to the plan. Id. The court found that "by doing nothing more than mentioning that the [c]redit [u]nion's mortgage would be paid outside the plan, the plan did not 'provide for' the mortgage." Id. at 1315. Accordingly, "[b]y neither stipulating to nor making provisions for the [c]redit [u]nion's mortgage, the plan did not 'provide for' it, and the mortgage was not included in the discharge under § 1328(a)." Id.

The Bankruptcy Court specified, on multiple occasions that the postpetition fees that Appellee sought to recover were not covered by Appellant's bankruptcy plan. (See Docs. 9.301; 9.382 at 2, 7; 10.192). Here, as in Dukes, Appellee's postpetition fees were not discharged under the plan once Appellant completed her payments under the plan. Accordingly, Appellee was not prohibited from seeking such postpetition attorney's fees, as the Bankruptcy Court concluded.

Accordingly, after due consideration, it is

ORDERED:

1. Appellant's Motion to Rehear and Reconsider (Doc. 25) is **GRANTED to the extent that** the Court's previous Order dismissing this case for lack of jurisdiction is **VACATED**.
2. The Bankruptcy Court's August 9, 2022 Order Denying Debtor's Motions for Sanctions (Doc. 1 at 3–11) is **AFFIRMED**.
3. The Clerk of Court is **DIRECTED** to amend judgment consistent with this Order.

DONE and **ORDERED** in Jacksonville, Florida this 21st day of April 2023.

BRIAN J. DAVIS
United States District Judge

8
Copies furnished to:

Counsel of Record
Unrepresented Parties

EXHIBIT D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

AVA ELECTRIS CANNIE aka Eva Helene Cannie, dba County Club Merchant Magazine,

Appellant,

v. Case No. 3:22-cv-1022-BJD

JACKSONVILLE GOLF & COUNTRY CLUB PROPERTY OWNERS ASSOCIATION, INC., JGCC POA, JGCC PROPERTY OWNERS ASSOCIATION, INC., and JGCC PROPERTY OWNERS ASSOCIATION, INC.,

Appellees.

AMENDED JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

That pursuant to the Court's Order entered on April 21, 2023, the Bankruptcy Court's August 9, 2022, Order Denying Debtor's Motion for Sanctions (Doc. 1 at 3-11) is AFFIRMED.

Date: April 24, 2023

ELIZABETH M. WARREN,
CLERK

s/JR, Deputy Clerk

Copy to:

Counsel of Record
Unrepresented Parties

EXHIBIT E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

AVA ELECTRIS CANNIE aka Eva Helene Cannie, dba County Club Merchant Magazine,

Appellant,

v. Case No. 3:22-cv-1022-BJD

JACKSONVILLE GOLF & COUNTRY CLUB PROPERTY OWNERS ASSOCIATION, INC., JGCC POA, JGCC PROPERTY OWNERS ASSOCIATION, INC., and JGCC PROPERTY OWNERS ASSOCIATION, INC.,

Appellees.
_____/

ORDER

THIS CAUSE is before the Court on Appellant's Motion (Doc. 28). Appellant moves for the Court to rehear the amended judgment (Doc. 27); reconsider its prior Order (Doc. 26); and vacate the amended judgment due to mistake, confusion of facts, and incorrect facts.

The Federal Rules of Civil Procedure (Rules) prescribe two ways a party can seek review of a judgment entered against it absent an appeal to the Circuit Court. Rule 59(e) allows a district court to alter or amend a judgment if reconsideration is sought within twenty-eight days of judgment

being entered, though such a motion will be granted only if there is newly discovered evidence, or the district court made a manifest error of law or fact. See Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007). Rule 60 allows a court to relieve a party from a judgment or order because of mistake, inadvertence, surprise, excusable neglect, or for any other reason that justifies relief and is not burdened by the same time constraints in Rule 59. See Rice v. Ford Motor Co., 88 F.3d 914, 918 (11th Cir. 1996).

The Eleventh Circuit has determined "a motion to reconsider is a limited remedy that should be used sparingly, and not to 'set forth new theories of law' or relitigate issues that have already been considered by the court." Watkins v. Johnson, 853 F. App'x 455, 459 n.5 (11th. Cir. 2021) (citing Mays v. U.S. Postal Serv., 122 F.3d 43, 46 (11th Cir. 1997).

The Court granted Appellant's motion to reconsider when the Court dismissed this appeal for lack of jurisdiction. (Doc. 26). The Court then evaluated the merits of Appellant's claims and determined the Bankruptcy Court did not err in denying Appellant's motions for sanctions.

In Appellant's instant motion for reconsideration, she advances the same arguments made in her initial brief. Compare Doc. 12 with Doc. 28. Appellant does not argue there is newly discovered evidence since this Court's Order dismissing the appeal on the merits. See generally Doc. 28. Since Appellant's appeal has been filed, there has been no change in

controlling law, no new evidence presented, and reconsideration is unnecessary to correct a clear error or prevent manifest injustice. See Delaware Valley Floral Grp., Inc. v. Shaw Rose Nets, LLC, 597 F.3d 1374, 1383 (Fed. Cir. 2010). Appellant argues against this Court's legal analysis, yet the Court need not relitigate issues previously determined. See Watkins, 853 F. App'x at 459 n.5; Mays, 122 F.3d at 46.

Accordingly, it is

ORDERED:

1. Appellant's Motion (Doc. 28) is **DENIED**.
2. The Clerk of Court is **DIRECTED** to email a copy of this Order to Appellant at the following electronic mailing addresses:
    a. avacannie@comcast.net
    b. avaelectriscannie@gmail.com
    c. avacourtpleadings@gmail.com

DONE and **ORDERED** in Jacksonville, Florida this 2nd day of May 2023.

BRIAN J. DAVIS
United States District Judge

8
Copies furnished to:
Counsel of Record
Unrepresented Parties

EXHIBIT F

ORDERED.

Dated: August 09, 2022

Jason A. Burgess
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

Case No.: 3:10-bk-07291-BAJ
Chapter 13

AVA ELECTRIS CANNIE
a/k/a EVA HELENE CANNIE,

Debtor.
_____/

ORDER DENYING DEBTOR'S MOTIONS FOR SANCTIONS

This Case came before the Court for trial on July 7, 2022 (the "Trial"), on the *Motion for Order of Contempt and Sanctions* (Doc. 716) and the *Motion for Order of Contempt and Sanctions* (Doc. 717) (collectively the "Motions") filed by Ava Electris Cannie a/k/a Eva Helene Cannie (the "Debtor") and the Response (Doc. 739) filed by JGCC Property Owners Association, Inc. ("JGCC"). By the Motions, the Debtor seeks sanctions against JGCC for asserting postpetition attorney's fees in violation of the discharge injunction. JGCC requests that the Court deny the relief requested based on the specific language in the Confirmation Order and the *res judicata* effect of prior orders of the Court.

At the conclusion of the Trial, the Court took the matter under advisement. For the reasons discussed herein, the Court finds that the Confirmation Order did not provide for JGCC's postpetition fees nor did the Court disallow those fees within the meaning of 11 U.S.C. § 1328(a). Therefore, the disputed fees were not discharged. As a separate and independent basis for denial, the Court finds that *res judicata* bars the Debtor from bringing claims already adjudicated by this Court. Accordingly, the Court will deny the Motions.

Background

On August 20, 2010, the Debtor filed a petition for relief under Chapter 13 of the United States Bankruptcy Code.[1] (Doc. 1). The Case has a long and convoluted history that spans over a decade. Over the course of the Case, the Debtor engaged in extensive litigation and discovery disputes with JGCC and other creditors.[2] In total, the Debtor filed ten Chapter 13 Plans. (Docs. 11, 21, 140, 159, 175, 232, 263, 272, 307, 318). Additionally, the Debtor defaulted on her plan payments and postpetition obligations resulting in numerous dismissals, motions to vacate, and reinstatements. (Docs. 56, 123, 146, 163, 191, 577-78, 583, 588, 590, 606, 618-19, 623, 628, 638).

On November 2, 2010, JGCC filed Proof of Claim 9 ("Claim 9") for $748.46 as a claim secured by Debtor's residence at 12959 Hunt Club Road North, Jacksonville, FL 32224 (the "Real Property"). The Debtor treated Claim 9 as a secured claim in her initial Chapter 13 Plan. (Doc. 11). Notwithstanding the plan treatment, the Debtor objected to Claim 9 arguing that failure to file a claim of lien prepetition rendered Claim 9 unsecured. (Doc. 66). Ultimately, the Court overruled the objection and determined that JGCC held a secured claim. (Doc. 213).

[1] This Case is the Debtor's fifth petition for relief under Chapter 13 of the United States Bankruptcy Code since 2001. (Case Nos.: 3:01-bk-10471-JAF, 3:02-bk-09322-JAF, 3:03-bk-08411, and 3:05-bk-03279-JAF).
[2] The Debtor filed the Case with the assistance of counsel, but shortly thereafter terminated her attorney and navigated most of the Case pro se. (Doc. 55).

On May 17, 2012, JGCC filed a Notice of Postpetition Fees related to Claim 9, and the Debtor responded by filing an objection (the "Objection") (Doc. 239). The Debtor argued that JGCC's attorney acted inefficiently, the postpetition fees violated bankruptcy law, and JGCC owed her $8,865.45 for outdoor lights. Id. JGCC responded that the Debtor improperly treated Claim 9 as if it were a mortgage claim, which accrues prepetition, rather than as an association claim that runs with the land and accrues ongoing assessments postpetition. (Doc. 255). On August 9, 2012, the Court entered an Order Overruling the Objection and made the following determinations:

> (i) The principles of *res judicata* and collateral estoppel bar the Debtor from continuing to contest the status of JGCC's claim.
> (ii) JGCC is entitled to rely upon the Court's prior rulings.
> (iii) JGCC acted reasonably in hiring counsel to protect its rights where the Debtor attempted to modify those rights through her plan.
> (iv) The Debtor must pay JGCC for postpetition debt, including, without limitation, assessments, interest, late fees, and attorney's fees.

(the "Postpetition Fee Order") (Doc. 287 at 2-3).

The Debtor filed a Motion for Rehearing of the Postpetition Fee Order and argued that she is not liable for JGCC's postpetition attorney's fees because: (i) the fees are unreasonable and disproportionately high in relation to the prepetition claim; and (ii) the postpetition fees violate bankruptcy law and are not her responsibility as a matter of law (the "Motion for Rehearing") (Doc. 290). Eventually, the Debtor withdrew the Motion for Rehearing. (Doc. 392).

On November 7, 2012, JGCC filed a Motion for Relief from Stay to collect its postpetition assessments and attorney's fees against the Debtor and to file a claim of lien against the Real Property (the "Motion for Relief") (Doc. 334). The Debtor filed a Motion to Strike and a Response, in which she argued that JGCC held an unsecured claim and that litigating the Motion for Relief would waste valuable time and resources. (Docs. 341-42).

After a hearing, the Court granted the Motion for Relief and denied the Motion to Strike (Docs. 357, 379). Importantly, the Court validated the Debtor's ongoing postpetition obligations to JGCC and lifted the automatic stay for JGCC to enforce its *in rem* and *in personam* postpetition rights. (Doc. 357). As a direct result of the Court's ruling, JGCC withdrew its claim for postpetition fees as moot. (Doc. 352).

On November 27, 2012, the Debtor filed a Motion for Injunction against JGCC. (Doc. 355). The Debtor recycled her prior arguments, including personal attacks on JGCC'S attorney, and sought to enjoin JGCC from engaging in further "unnecessary activity." Id. at 1-2. After an evidentiary hearing, the Court denied the Motion for Injunction. (Doc. 385).

On December 19, 2012, the Court entered an Order Confirming Chapter 13 Plan (the "Confirmation Order") (Doc. 363). The Confirmation Order provided in paragraph 8:

> Any post petition costs or expenses incurred by or on behalf of any secured creditor will be discharged upon the Debtor's completion of the plan, unless specifically provided for in this order, or by further order of Court on motion filed prior to completion of the plan. Regardless of objection by the creditor, this provision specifically supersedes all language in any confirmed plan that states differently.

Id. at 2. Notably, the Confirmation Order further stated that "JGCC Post-petition fees & Costs; Filed 5/17/2012 will not be provided for in the terms of the plan; will be resolved directly between Debtor and Creditor" and delineated JGCC's postpetition claim as secured and "paid outside the plan." Id. at 7, 9.

On June 25, 2015, following numerous dismissals and reinstatements of her case, the Debtor completed her plan payments and received a discharge. (Doc. 646). After the Court closed the case, the Debtor sought to reopen the Case multiple times to pursue sanctions against JGCC and other creditors. (Docs. 657, 664, 679, 686, 688-89, 694). Due to the Debtor's failure to timely

prosecute the alleged violations, the Court again closed the Case and denied additional requests to reopen. (Docs. 659, 663, 682-83, 690, 697).

Following four years of inactivity, the Debtor filed a Motion to Reopen and the Motions seeking sanctions against JGCC. (Docs. 700, 716-17).[3] After a trial on the Motion to Reopen, the Court reopened the Case "for the limited purpose of determining whether [JGCC] is in contempt for violating the discharge, and if sanctions are appropriate."[4] (Doc. 730).

In her Motions, Pre-Trial Brief (Doc. 740), and arguments at the Trial, the Debtor asserts that: JGCC's attorney's fees are unreasonable and disproportionally high relative to its prepetition claim, JGCC's presumed discharge violations are egregious warranting punitive damages, and the Court included special language in the Confirmation Order to protect the Debtor from JGCC's unethical billing practices. As articulated by the Debtor's counsel at the trial on the Motion to Reopen, the Debtor's request for relief relies almost entirely on the language in paragraph 8 of the Confirmation Order. The Debtor interprets that language to mean that JGCC's postpetition attorney's fees were subject to discharge.

JGCC asserts that: (i) language specifically referencing JGCC in the Confirmation Order trumps the general language in paragraph 8; (ii) *res judicata* and collateral estoppel bar the Debtor from raising the same arguments previously adjudicated by the Court; and (iii) JGCC's *in rem* rights are nondischargeable as covenants that run with the land. (Doc. 739).

Analysis

In the analysis below, the Court discusses the impact of the discharge on a postpetition claim paid outside the confirmed plan and whether *res judicata* bars the relief sought by the Debtor.

[3] Soon after filing the Motion to Reopen, the Debtor retained counsel. (Doc. 719).
[4] Subsequent to the Motion to Reopen, the Case was transferred to my caseload. In reviewing the matter, I have read all pertinent docket entries and listened to all relevant audio recordings of previous hearings.

A. Impact of 11 U.S.C. § 1328(a) on a Postpetition Claim Paid Outside the Plan

The Court first addresses the impact of the discharge on a postpetition claim paid outside the confirmed plan. Only debts "provided for by the plan or disallowed under section 502" are discharged. 11 U.S.C. § 1328(a). Notably, the postpetition claim of JGCC, including its postpetition attorney's fees, was not "provided for" by the confirmed plan, and the Confirmation Order specifically stated that JGCC's postpetition claim "will not be provided for in the terms of the plan" and would be "paid outside the Plan." (Doc. 363 at 7, 9). Therefore, the Court finds that JGCC's postpetition claim was not discharged because the confirmed plan did not provide for it. Dukes v. Suncoast Credit Union (In re Dukes), 909 F.3d 1306, 1310 (11th Cir. 2018) ("Because Debtor's plan did nothing more than state that the Credit Union's mortgage would be paid outside the plan, it was not 'provided for' and was not discharged."); see also In re Park, 532 B.R. 392, 393 (Bankr. M.D. Fla. 2015) (concluding "that a Chapter 13 plan that proposes to pay a secured creditor directly outside the plan . . . does not 'provide for the debt' owed to the creditor such that the debt is discharged under § 1328(a).").

Furthermore, JGCC's claim for postpetition attorney's fees was not disallowed within the meaning of Section 1328(a) for various reasons. First, the Court previously ruled that JGCC is entitled to postpetition fees in the Postpetition Fee Order. (Doc. 287). Second, the Court acknowledged in the Order Granting Relief from Stay that the Debtor's "responsibilities shall exist for so long as the Debtor owns real property within the Association" and lifted the stay for JGCC to enforce its *in rem* and *in personam* postpetition rights. (Doc. 357). Third, the Confirmation Order provided that the postpetition fees would "be resolved directly between Debtor and [JGCC]." (Doc. 363).

Finally, the fact that JGCC withdrew its postpetition claim is not determinative because Section 1305 does not require a creditor to file a postpetition claim. Otter Creek Homeowners' Ass'n v. Davenport (In re Davenport), 534 B.R. 1, 4 (Bankr. E.D. Ark. 2015); see also In re Sims, 288 B.R. 264, 268 (Bankr. M.D. Ala. 2003) (holding that a postpetition creditor "may elect not to file a claim under Section 1305"). Unlike Section 502, which allows a debtor under certain circumstances to file a claim for a creditor, only a creditor may file a claim under Section 1305. Davenport, 534 B.R. at 4. Although some courts have found that the failure to file a proof of claim results in the disallowance of the claim, those cases are distinguishable from the instant case because they involved prepetition claims. See, e.g., Dixon v. IRS (In re Dixon), 218 B.R. 150, 154 (B.A.P. 10th Cir. 1998) (affirming bankruptcy court's determination that prepetition tax liability was not covered by Section 1305 and was discharged). Therefore, the Court finds that JGCC's withdrawal of its postpetition claim does not equate to disallowance within the meaning of Section 1328(a). This result is also consistent with the Court's previous rulings, which specifically acknowledged JGCC's postpetition rights. Based on the foregoing, the Court finds that JGCC's postpetition claim was not discharged.

Ultimately, the Debtor's request for relief relies almost entirely on the language in paragraph 8 of the Confirmation Order, which she interprets to mean that JGCC's postpetition attorney's fees were discharged. For the reasons set forth above, the Court disagrees with that interpretation, and the Debtor's other various suppositions are therefore rendered largely superfluous.

B. Claim Preclusion (*Res Judicata*): The Postpetition Fee Order

The Court will next address whether *res judicata* bars the relief sought by the Debtor. Claim preclusion, also called *res judicata*, bars relitigating a claim if: (1) a court of competent

jurisdiction; (2) renders a final judgment on the merits; (3) the parties are identical; and (4) the same cause of action is involved in both cases. Ragsdale v. Rubbermaid, Inc., 193 F.3d 1235, 1238 (11th Cir. 1999). A bankruptcy court order allowing or disallowing a claim has *res judicata* effect. In re Wotkyns, 274 B.R. 690, 694-95 (Bankr. S.D. Tex. 2002). The Debtor previously objected to JGCC's postpetition attorney's fees, and the Court overruled the objection. (Docs. 239, 287). Specifically, the Court stated:

> The Debtor chose to include JGCC within her plan and Debtor can not now be heard to complain that JGCC choose to obtain representation by Counsel to protect its interest and its governing documents and that she is now required under the operative statutes and governing documents to pay for that post-petition debt; including, without limitation, assessment, interest, late fees and attorney fees.

(Doc. 287 at 3).

The Court will discuss each of the four elements of *res judicata* as they relate to the Postpetition Fee Order. First, the parties do not contest the jurisdiction of the Court. Second, the parties are identical. Third, the Postpetition Fee Order acted as a final judgment on the merits. In re Gonzalez, 372 B.R. 837, 844 (Bankr. W.D. Tex. 2007) (stating that "a bankruptcy court's claim allowance order had *res judicata* effect" and acts as a "final judgment") (citing Matter of Baudoin, 981 F.2d 736, 742 (5th Cir. 1993)). With respect to the fourth element, the Court must look to the substance of the actions, not their form. Ragsdale, 193 F.3d at 1239 (citing Citibank, N.A. v. Data Lease Financial Corp., 904 F.2d 1498, 1503 (11th Cir. 1990)).

By the Motions, the Debtor seeks disallowance of the postpetition fees charged by JGCC. (Docs. 716-717). The Debtor previously argued that the postpetition fees were excessive, were created by JGCC's attorney performing unnecessary services, and "have no standing and violate bankruptcy law." (Doc. 239 at 1-2). The Debtor raises the same arguments in the Motions, namely that JGCC's attorney incurred "excessive legal fees" that violated bankruptcy law. (Doc. 716 at

1). As both claims grew out of the same nucleus of operative facts, they are essentially the same cause of action for purposes of considering whether *res judicata* applies. Ragsdale, 193 F.3d at 1239. Accordingly, all four elements are met, and the doctrine of *res judicata* bars the Debtor from relitigating the same cause of action.

Conclusion

Based on the specific language contained in the Confirmation Order, JGCC's postpetition attorney's fees were not provided for within the meaning of Section 1328(a) and were not discharged. Additionally, the Postpetition Fee Order precludes the Debtor from bringing the same claim again based on the doctrine of *res judicata*. The Court does not reach a determination regarding the reasonableness of JGCC's attorney's fees, and the Debtor may raise this issue in another forum.

Accordingly, it is

ORDERED:

The Motions are **DENIED**.

EXHIBIT G

ORDERED.

Dated: September 02, 2022

Jason A Burgess
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

Case No.: 3:10-bk-07291-BAJ
Chapter 13

AVA ELECTRIS CANNIE
a/k/a EVA HELENE CANNIE,

Debtor.
_____/

ORDER DENYING DEBTOR'S MOTION FOR REHEARING

This case is before the Court on the *Motion for Rehearing* (the "Motion") (Doc. 760) filed by Ava Electris Cannie a/k/a Eva Helene Cannie (the "Debtor"). For the reasons set forth herein, the Court will deny the Motion.

By the Motion, the Debtor seeks reconsideration of the Order Denying Debtor's Motions for Sanctions (the "Order") (Doc. 756), in which the Court denied the Debtor's request for sanctions against JGCC Property Owners Association, Inc. ("JGCC"). Id. The Debtor's request for sanctions was based on alleged violations of the discharge injunction by JGCC for asserting postpetition attorney's fees. (Docs. 716, 717). Following a trial, the Court determined that the Confirmation Order did not provide for JGCC's postpetition fees nor did the Court disallow those fees within the meaning of 11 U.S.C. § 1328(a). (Doc. 756 at 2). Therefore, the disputed fees were not

discharged.[1] Id. As a separate and independent basis for denial, the Court found that *res judicata* barred the Debtor from bringing claims already adjudicated by the Court. Id.

Motions for reconsideration are governed by Federal Rule of Bankruptcy Procedure 9023, which incorporates Rule 59 of the Federal Rules of Civil Procedure ("Rule(s)"). A court may grant relief under Rule 59(e) based on: "(1) an intervening change in controlling law; (2) newly discovered evidence; or (3) clear error or manifest injustice." Woide v. Fed. Nat'l Mortg. Ass'n (In re Woide), No. 6:16–cv–1484–Orl–37, 2017 WL 549160, at *1 (M.D. Fla. Feb. 9, 2017), aff'd, 730 F. App'x 731 (11th Cir. 2018). "The Court's reconsideration of a previous order is an extraordinary remedy, to be employed sparingly." Mannings v. Sch. Bd. Of Hillsborough Cty., 149 F.R.D. 235 (M.D. Fla. 1993). "The burden is upon the movant to establish the extraordinary circumstances supporting reconsideration." Id.

A motion for reconsideration should not be based on "factual or legal grounds that could and should have been raised at the original hearing." Seymour v. Potts & Callahan Contracting Co., 2 F.R.D. 38, 40 (D.D.C. 1941). Whether to grant relief under Rule 59 is a determination left to the Court's "sound discretion." Region 8 Forest Service Timber Purchasers Council v. Alcock, 993 F.2d 800, 806 (11th Cir. 1993).

Upon review, the Debtor does not reference a change in controlling law or assert new evidence. Therefore, the Court will consider the sole remaining basis for relief: whether the Motion demonstrates clear error or manifest injustice.

In support of her position, the Debtor relies on a Middle District of Florida Bankruptcy Court decision for the proposition that the Court discharged the disputed debt with its inherent authority under § 105 and that § 1328(a) is "inapposite." (Doc. 760 at 2-4). In re Bates, No. 3:07-

[1] Pursuant to the provisions of the Bankruptcy Code and as stated in the Order Discharging Debtor After Completion of Plan, the Debtor was granted a discharge under 11 U.S.C. § 1328(a). (Doc. 646).

bk-05472, 2008 WL 11519576 (Bankr. M.D. Fla. April 15, 2008). The Debtor's argument, however, is misplaced because Bates involved a principal residence mortgage claim paid **inside** the plan. In re Bates, 2008 WL 11519576, at *1-5. Specifically, the discussion in Bates related to mortgage creditors who received regular postpetition payments and cure of prepetition arrears through a Chapter 13 plan. Id. at *2 ("Notwithstanding § 1322(b)(2), the Code allows a debtor to manage long-term secured debt by curing a pre-petition default and maintaining payments throughout the pendency of a Chapter 13 plan pursuant to § 1322(b)(5)."). Therefore, Bates is distinguishable, and the reasoning used in Bates is inapplicable because the dispute in the instant case involves the postpetition claim of a homeowners association that was treated **outside** the plan.

Further, the Court finds this new argument untimely where, as here, the Debtor raises this argument for the first time in the Motion.[2] A new argument raised for the first time in a Motion under Rule 59(e) "generally is not timely raised." Paleteria La Michoacana, Inc. v. Productos Lacteos Tocumbo S.A. De C.V., 247 F. Supp. 3d 76, 92 (D.D.C. 2017).

The Debtor's secondary argument is that the "only specific language referencing JGCC was language in the Confirmed Plan." (Doc. 760 at 4). This argument is unpersusaive for three reasons. First, Exhibit A attached as part of the Confirmation Order specifically references JGCC and states that JGCC's claim will be "paid outside the plan." (Doc. 363 at 9). Second, the Housekeeping Plan attached as part of the Confirmation Order provides that JGCC's postpetition claim "will not be provided for in the terms of the plan." (Doc. 363 at 7). Third, the language in paragraph 8 does not transform JGCC's postpetition claim from one paid outside the plan to one paid under the plan. Therefore, as JGCC's claim was treated outside the plan, it was not discharged pursuant to § 1328(a). See Dukes v. Suncoast Credit Union (In re Dukes), 909 F.3d 1306, 1310 (11th

[2] The Debtor did not cite Bates in the Motions or her Pre-Trial Brief. (Docs. 716-717, 740).

Cir. 2018) ("Because Debtor's plan did nothing more than state that the Credit Union's mortgage would be paid outside the plan, it was not 'provided for' and was not discharged.").

Based on the foregoing, the Court finds that the Debtor has failed to demonstrate clear error or manifest injustice, let alone establish "extraordinary circumstances" to support her request for reconsideration. Therefore, reconsideration of the Order is not warranted.

Accordingly, it is

ORDERED:

The Motion is **DENIED**.

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