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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 In re: JANICE RENE HAYNES,
11 Chapter 7 Debtor
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Case Nos. CV 15-04236-AB
CV 15-07159-AB

Appeals from Bk. No. 14-bk-31355-NB

13
14 JANICE RENE HAYNES,
15 Appellant,
16

ORDER AFFIRMING BANKRUPTCY
COURT ORDERS

17 v.

18 TIMOTHY J. YOO, CHAPTER 7
TRUSTEE,
19 Appellee.
20

21 Appellant Janice Rene Haynes (“Appellant”), appearing pro se, appeals from
22 two orders of the bankruptcy court. For both appeals, Appellee Timothy J. Yoo,
23 Chapter 7 Trustee (“Trustee”) filed responsive memoranda, and Appellant filed reply
24 memoranda. Also in both appeals, Appellant filed multiple corrected memoranda,
25 amended memoranda, supplemental exhibits, and the like. In light of Appellant’s pro
26 se status, the Court accepted these filings, but the result is a confusing docket. For
27 any memorandum as to which Appellant made multiple filings, the Court will treat the
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1 final filing as the operative one. As such, the Court considered the following
2 memoranda: in Case No. 15-04236, Dkt Nos. 30, 39, 49; in Case No. 15-07159, Dkt.
3 Nos. 51, 54, 65.

4 **I. BACKGROUND**

5 Both appeals concern the bankruptcy court's denial of Appellant's motions to
6 convert her Chapter 7 case to a Chapter 13 case.¹ Appellant claimed that she was
7 given bad advice by a non-lawyer bankruptcy preparer to file her bankruptcy under
8 Chapter 7, but she would have been better off not filing at all or filing under Chapter
9 13. Appellant therefore first sought to dismiss the case; the bankruptcy court denied
10 that motion, and Appellant has not appealed that order. Appellant thereafter moved
11 to convert her case from Chapter 7 to Chapter 13, but the court denied those motions.

12 In Case No. 15-04236, Appellant appeals the bankruptcy court's 05/27/2015
13 Order Denying Debtor's Motion to Convert Chapter 7 Case to Chapter 13. *See*
14 Supplemental Excerpts of Record ("SER," Dkt. No. 40), Exs. 4, 5 ("First Motion");
15 Exs. 6, 7 (Trustee's Opposition and RJN); Ex. 9 ("First Order," Bk. Dkt. No. 74); Ex.
16 10 (Notice of Appeal).

17 In Case No. 15-07159, Appellant appeals the bankruptcy court's 08/26/2015
18 Order Denying Application for Order Setting Hearing on Shortened Notice and
19 Denying Underlying Motion with Prejudice. *See* SER (Dkt. No. 55), Exs. 11, 12
20 ("Second Motion"); Ex. 13 ("Second Order" (Bk. Dkt. No. 110)); Ex. 14 (Notice of
21 Appeal).

22 The Court notes that substantial portions of Appellant's memoranda are
23 unintelligible or concern matters not on appeal, and that the memoranda include only a
24 few citations to the record. Furthermore, Appellant's reply memoranda are largely
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26 ¹ Appellant's memoranda in both appeals also argue that the bankruptcy court's
27 04/21/2015 Order Denying Motion for Voluntary Dismissal of Chapter 7 Case was
28 erroneous, but Appellant's notices of appeal do not include this Order. Therefore,
that Order is not before the Court on appeal.

1 non-responsive to the Trustee’s memoranda, and instead mostly repeat the same
2 arguments Appellant made in her opening memoranda.

3 The district court has jurisdiction to hear these appeals pursuant to 28 U.S.C.
4 §158(a). The Court will first address Case No. 15-04236.

5 **II. STANDARD OF REVIEW**

6 The standard of review is the same in for both appeals.

7 A district court may hear appeals from “final judgments, orders, and decrees,
8 and, with leave of the court, from interlocutory orders and decrees, of bankruptcy
9 judges.” 28 U.S.C. §158(a). A bankruptcy court’s findings of fact are reviewed under
10 the “clearly erroneous” standard, and its conclusions of law are reviewed *de novo*.
11 *Compton Impressions, Ltd., v. Queen City Bank, N.A. et al. (In re Compton*
12 *Impressions, Ltd)*, 217 F.3d 1256, 1260 (9th Cir. 2000); Fed. R. Bankr. P. 8013
13 (“Findings of fact, whether based on oral or documentary evidence, shall not be set
14 aside unless clearly erroneous, and due regard shall be given to the opportunity of
15 the bankruptcy court to judge the credibility of the witnesses.”).

16 A bankruptcy court’s decision on a matter subject to its discretion will not be
17 set aside unless there is plain error or abuse of discretion. An order regarding
18 conversion of a case is reviewed for abuse of discretion. *Beatty v. Traub (In re*
19 *Beatty)*, 162 B.R. 853, 855 (9th Cir. BAP 1994); *Rosson v. Fitzgerald (In re Rosson)*,
20 *545 F.3d 764, 771(9th Cir. 2008)* (denial of debtor’s request for dismissal of Chapter
21 13 case and to convert to Chapter 7 is reviewed for abuse of discretion).

22 Whether a bankruptcy court has abused its discretion is determined by a two-
23 part test. First, the appellate court determines *de novo* whether the bankruptcy court
24 identified the correct legal rule to apply to the relief requested. Second, if the
25 bankruptcy court correctly applied the legal rule, then its factual findings are
26 examined for clear error. The bankruptcy court’s factual findings are affirmed unless
27 it is determined that those findings are “(1) ‘illogical,’ (2) ‘implausible,’ or (3) without
28 ‘support in inferences that may be drawn from the facts in the record.’ ”. *United States*

1 *v. Hinkson*, 585 F.3d 1247, 1261-62, n.20 (9th Cir. 2009) (*en banc*).

2 **III. DISCUSSION**

3 **A. The Order Denying Appellant’s First Motion to Convert is AFFIRMED**
4 **(Case No. 15-04236)**

5 Appellant appeals the bankruptcy court’s order denying her First Motion to
6 convert her Chapter 7 case to a Chapter 13 case. Appellant argued that she was given
7 bad advice to file under Chapter 7 and that she should have filed, if at all, under
8 Chapter 13 instead, so she moved to convert the case. Appellant contends that the
9 order denying her motion was in error for three reasons. None of them has merit.

10 First, Appellant argues that the Trustee’s opposition to her motion to convert
11 was untimely and that it was an abuse of discretion for the bankruptcy court to
12 consider it. Appellant filed her notice of and motion to convert on May 12, 2015.
13 Under Bankruptcy Rule 9013-1(o)(1), any written objection was to be filed within 14
14 days of the service of the notice. Thus, the deadline to oppose was May 28, 2015; the
15 Trustee filed his opposition on May 25, 2015, so it was timely. Appellant says the
16 Trustee’s opposition was untimely because the bankruptcy judge ordered filings to be
17 submitted at least 7 days before May 26, 2015, which would be May 19, 2015. But
18 upon review of the full transcript Appellant cites, the judge was not referring to filings
19 on the motion to convert, but to filings related to the status conference also scheduled
20 for May 26, 2015. This ground of the appeal is therefore unfounded.

21 Second, Appellant argues that her motion to convert should have been granted
22 because she did not have any creditors to protect under Chapter 7, including the
23 Internal Revenue Service (“IRS”). Appellant argues that the IRS did not want her tax
24 debt to be in the bankruptcy case and instead wanted to resolve it in an ongoing case
25 in tax court. The only evidence Appellant points to that the IRS was willing to waive
26 its claim are Appellant’s own difficult-to-follow statements about the IRS claim at a
27 December 1, 2015 hearing—well after the bankruptcy court issued its May 27, 2015
28 Order that she appeals. It suffices to say that Appellant’s unsubstantiated statements

1 do not to establish the status of the IRS's claim. Appellant has not cited competent
2 evidence that the IRS did in fact waive its claim, and the record establishes the
3 contrary: as of August 8, 2017, the Claims Register for Appellant's bankruptcy case
4 shows several extant claims, including an IRS claim of some \$104,212. *See* Claims
5 Register (Dkt. No. 40-4, Ex. 11, pp. 408-410).

6 Appellant finally argues that the bankruptcy judge was biased against her. The
7 Court has reviewed Appellant's assertions and they establish only that she disagrees
8 with his rulings. This does not establish "bias." Furthermore, the Court has examined
9 the partial transcripts of the March 10, 2015 and April 14, 2015 hearings that
10 Appellant provided and these portions do not evidence bias against her; rather, they
11 show that the judge attempted to find some remedy for Appellant.

12 Although the Order does not expressly provide the bankruptcy court's
13 reasoning, it does state that the court considered the memoranda and the arguments
14 presented at hearings on March 10, 2015 and April 14, 2015. The memoranda before
15 the bankruptcy court present the applicable legal standards, and the Court finds that
16 the bankruptcy court applied them, and that it did not abuse its discretion in denying
17 Appellant's motion. The bankruptcy code provides that a "debtor may convert a
18 case," but "a case may not be converted. . . unless the debtor may be a debtor under
19 such chapter." 11 U.S.C. § 706. A person "may be a debtor" under Chapter 13 only if
20 she is "an individual with regular income." 11 U.S.C. §109(e). Here, Appellant's
21 schedules reflect that she was not employed and had a negative net monthly income,
22 so she was not an "individual with regular income" and was not qualified to be a
23 debtor under Chapter 13. The bankruptcy court therefore did not err in denying
24 Appellant's motion to convert.

25 **B. The Order Denying Appellant's Second Motion to Convert is**

26 **AFFIRMED (Case No. 15-07159)**

27 Appellant appeals the bankruptcy court's August 26, 2015, Order Denying
28 Application for Order Setting Hearing on Shortened Notice and Denying Underlying

1 Motion with Prejudice. Appellant’s underlying motion, filed earlier on August 26,
2 2015, was entitled Emergency Motion to Apply Homestead Exemption and Convert to
3 Chapter 13 (“Second Motion”). After reviewing the Second Motion and the Order,
4 the Court affirms.

5 In her Second Motion, Appellant sought to apply the homestead exemption to
6 her Heyward rental property, and to convert from Chapter 7 to Chapter 13. The
7 bankruptcy court ruled that the homestead exemption did not apply to the Heyward
8 rental property because Appellant was not living there either when she filed the case
9 or when she filed the motion. This correctly applies the law governing whether a
10 dwelling is a debtor’s “homestead.” *See* Cal. Code Civ. P. § 704.710(c) (defining
11 “homestead”). Appellant sought the homestead exemption because she felt that she
12 should not have filed for bankruptcy either at all or under Chapter 7, but as the
13 bankruptcy court noted, that circumstance does not allow the court to disregard the
14 law governing the homestead exemption. The bankruptcy court therefore did not
15 abuse its discretion in not allowing Appellant the apply the homestead exemption to
16 the Heyward rental property.

17 In her Second Motion, Appellant also again sought to convert from a Chapter 7
18 to a Chapter 13 case. Appellant argued that she could obtain contributions from
19 friends and family to pay the trustee and to fund a plan. The bankruptcy court noted
20 that, in connection with Appellant’s First Motion to convert, the court said that no
21 such motion would be granted “unless, at a minimum, (a) the Debtor compensated the
22 chapter 7 trustee. . . and (b) the Debtor proposed a viable chapter 13 plan.” *See*
23 Second Order (emphasis in original). But, while the Second Motion purported to
24 attach declarations from the donors, no such declarations were actually filed, nor did
25 Appellant file any actual proposed Chapter 13 plan showing how she could pay in full
26 her creditors or the Chapter 7 trustee. This reasoning is consistent with the applicable
27 legal standard governing eligibility for Chapter 13. Appellant argues that she was
28 entitled to automatically convert her case, but as discussed above, a case cannot be

1 converted to a Chapter 13 case unless the debtor is eligible under Chapter 13, and
2 here, Appellant was simply not eligible under Chapter 13.

3 In sum, the bankruptcy court did not abuse its discretion in denying Appellant's
4 Second Motion.

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Orders appealed from are **AFFIRMED**.

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8 **IT IS SO ORDERED.**

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10 Dated: January 5, 2018



11 HONORABLE ANDRÉ BIROTTE JR.
12 UNITED STATES DISTRICT COURT JUDGE

13 CC: Bankruptcy Court and BAP
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