

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 16 2020

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

In re: MARY KAY DUFFIE,

Debtor,

MARY KAY DUFFIE,

Plaintiff-Appellant,

v.

STEVE GOTCHER; SHARON GOTCHER,

Defendants-Appellees.

No. 17-36010

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

MEMORANDUM*

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).

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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).

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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.