

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE TENTH  
CIRCUIT

Leroy Carrillo, Jr. v. Philip J. Montoya, Chapter 7 Trustee, et al.

Carrillo · No. BAP No. NM-25-014; BAP Appeal No. 25-14 · Decided May 7, 2026

SUMMARY

The Tenth Circuit Bankruptcy Appellate Panel affirmed the bankruptcy court’s denial of Leroy Carrillo, Jr.’s motions seeking recovery of settlement funds and relief related to alleged attorney misconduct, fraud, malpractice, and improper administration of his reopened Chapter 7 case. The Panel held that Carrillo’s challenge to the 2021 reopening of the case was untimely and, reviewing the bankruptcy court’s findings incorporated into the appealed order, concluded that reopening the case to administer assets was proper. The opinion is unpublished and nonprecedential, subject to specified exceptions.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Bankruptcy Appellate Panel of the Tenth Circuit                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Romero, Chief Judge; Loyd, Bankruptcy Judge; Hunt, Bankruptcy Judge                                                                                                                                                                                                 |
| JURISDICTION          | United States Bankruptcy Appellate Panel of the Tenth Circuit                                                                                                                                                                                                       |
| DECIDED               | May 7, 2026                                                                                                                                                                                                                                                         |
| DOCKET                | BAP No. NM-25-014; BAP Appeal No. 25-14                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Appellant appealed from the United States Bankruptcy Court for the District of New Mexico's orders denying his motions to recover funds and for immediate relief after a reopened Chapter 7 case administered proceeds from a tort settlement.                      |
| STANDARD OF REVIEW    | Factual findings are reviewed for clear error, legal conclusions de novo, and discretionary decisions for abuse of discretion. A discretionary decision is disturbed only if the court made a clear error of judgment or exceeded the bounds of permissible choice. |
| PRECEDENTIAL VALUE    | nonprecedential; persuasive only, subject to law-of-the-case, claim-preclusion, and issue-preclusion exceptions                                                                                                                                                     |
| PARTIES               | Leroy Carrillo, Jr. v. Philip J. Montoya, Chapter 7 Trustee, Rothstein Donatelli, LLP, Askew Law Firm, James I. Stang, Eric Schwartz,                                                                                                                               |

## TOPICS

chapter 7   appellate procedure   standard of review   preservation of error   due process

## PRACTICE AREAS

bankruptcy   bankruptcy appellate practice   civil procedure   constitutional law   remedies

## QUESTIONS PRESENTED

1. Whether the bankruptcy court abused its discretion in reopening Carrillo's Chapter 7 case.
2. Whether the bankruptcy court violated Carrillo's due-process rights by proceeding without adequate notice or opportunity to be heard.
3. Whether the bankruptcy court engaged in judicial bias or misconduct.
4. Whether the bankruptcy court abused its discretion by proceeding without Carrillo's attendance, omitting portions of hearing recordings, or failing to provide hearing materials.
5. Whether the appointment of the Chapter 7 trustee and Rothstein Donatelli as special counsel was improper because of an alleged conflict of interest.
6. Whether Carrillo was entitled to restitution or damages for alleged misappropriation, legal malpractice, judicial error, or misconduct.
7. Whether the bankruptcy court clearly erred in findings concerning Rothstein Donatelli's fees and testimony.

## HOLDINGS

1. The bankruptcy court did not abuse its discretion in reopening the closed Chapter 7 case sua sponte to administer the previously unscheduled tort asset. The challenge to the reopening itself was also untimely because the reopening order was final and Carrillo did not appeal it within the applicable period.
2. The alleged lack of notice of the docket entry reopening the case did not establish that the reopening was improper because reopening is a ministerial act that grants no substantive relief, and neither § 350(b) nor Rule 5010 expressly requires notice of reopening.
3. Carrillo failed to show judicial bias or misconduct; adverse rulings and ordinary courtroom administration, including rulings on continuances, do not alone demonstrate bias or partiality.
4. The panel declined to review arguments that Carrillo failed to preserve below, failed to argue plain error, inadequately briefed, or unsupported with the necessary transcripts and record materials.
5. Carrillo was not entitled to restitution or damages because he failed to establish that the bankruptcy court committed factual, legal, or discretionary error in denying his motions.

## KEY QUOTATIONS

*“In other words, the Bankruptcy Court may reopen a previously closed bankruptcy case sua sponte to administer assets, accord relief to the debtor, or for other cause.”* (at 14-15)

*“Reopening a closed bankruptcy case is a ministerial act, which does not grant any substantive relief.”* (at 15)

*“Accordingly, we AFFIRM the Bankruptcy Court.”* (at 22)

## FACTUAL BACKGROUND

Carrillo filed a Chapter 7 bankruptcy case in 1993 but did not schedule his claim arising from childhood abuse by the Archdiocese of Santa Fe. After the Archdiocese later entered Chapter 11, the claim was determined to be property of Carrillo's bankruptcy estate, and his closed Chapter 7 case was reopened to administer it. A Chapter 7 trustee was appointed, Rothstein Donatelli was employed as special counsel, and the trustee distributed more than \$192,000 to Carrillo after paying fees, expenses, and creditors. Carrillo later challenged the reopening, the administration and distribution of the settlement proceeds, counsel's fees, and alleged misconduct, but he often failed to preserve his arguments or provide an adequate appellate record.

## PROCEDURAL HISTORY

Carrillo and his spouse commenced a Chapter 7 case in 1993, which was later reopened in 2021 to administer Carrillo's previously unscheduled abuse claim against the Archdiocese of Santa Fe. The bankruptcy court appointed Philip Montoya as trustee and Rothstein Donatelli as special counsel, administered the settlement proceeds, and distributed funds after payment of claims and administrative expenses. After the case was reclosed and administratively reopened several times, Carrillo sought recovery, restitution, and other relief based on alleged fraud, embezzlement, malpractice, misconduct, due-process violations, and improper fees. Following an evidentiary hearing, the bankruptcy court denied relief, and the Bankruptcy Appellate Panel affirmed.

## DISPOSITION

affirmed

## CASES CITED

- *In re Durability, Inc.*, 893 F.2d 264, 265-66 (10th Cir. 1990)
- *Pierce v. Underwood*, 487 U.S. 552, 558 (1988)
- *In re Young*, 91 F.3d 1367, 1370 (10th Cir. 1996)
- *United States v. Ortiz*, 804 F.2d 1161, 1164 n.2 (10th Cir. 1986)
- *Cruz v. Farmers Ins. Exch.*, 42 F.4th 1205, 1210 (10th Cir. 2022)
- *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314-15 (1950)
- *In re Popp*, 323 B.R. 260 (9th Cir. BAP 2005)
- *In re Parker*, 313 F.3d 1267, 1270 (10th Cir. 2002)
- *In re Robertson*, 774 F. App'x 453 (10th Cir. 2019)
- *Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 15 (2017)

- Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991)
- Jennings v. Rivers, 394 F.3d 850, 854 (10th Cir. 2005)
- Hall v. Bellmon, 935 F.2d 1106 (10th Cir. 1991)
- Bertin v. United States, 478 F.3d 489, 491 (2d Cir. 2007)
- In re Mullendore, 741 F.2d 306, 308 (10th Cir. 1984)
- In re Seven Fields Dev. Corp., 505 F.3d 237, 248 n.10 (3d Cir. 2007)
- In re Castillo, 297 F.3d 940, 944-45 (9th Cir. 2002)
- In re Menk, 241 B.R. 896, 914 (9th Cir. BAP 1999)
- In re Petroleum Prod. Mgmt., Inc., 282 B.R. 9, 14 (10th Cir. BAP 2002)
- Woodmore, 135 F.4th 861, 873 (10th Cir. 2025)
- United States v. Nickl, 427 F.3d 1286, 1298 (10th Cir. 2005)
- United States v. Davis, 60 F.3d 1479, 1482 (10th Cir. 1995)
- Bronson v. Swensen, 500 F.3d 1099, 1105 (10th Cir. 2007)
- Hazel-Atlas Glass Co. v. Hartford-Empire Co.