

UNITED STATES COURT OF APPEALS **June 13, 2011**

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

IN RE: CLAUDINE RENE FULLER,

Debtor.

CLAUDINE RENE FULLER,

Appellant,

v.

TRACY L. ROBINSON,

Appellee.

No. 10-3268
(BAP No. 10-051-KS)
(BAP)

ORDER AND JUDGMENT*

Before **BRISCOE**, Chief Judge, **ANDERSON**, and **MURPHY**, Circuit Judges.

After examining the briefs and the appellate record, this court has determined unanimously that oral argument would not materially assist the resolution of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

*This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Proceeding *pro se*, appellant Claudine Rene Fuller appeals the dismissal of the appeal she filed with the Bankruptcy Appellate Panel of the Tenth Circuit (BAP). Fuller's BAP appeal involved a challenge to the bankruptcy court's approval of the payment of fees to the attorney who filed her Chapter 13 bankruptcy petition. Fuller believes her attorney was not responsible for staying the foreclosure sale of her home scheduled for December 15, 2009, when he filed her Chapter 13 bankruptcy petition on December 14, 2009. The BAP dismissed the appeal for lack of jurisdiction because the notice of appeal was not timely filed. *See Deyhimy v. Rupp (In re Herwit)*, 970 F.2d 709, 710 (10th Cir. 1992).

Having reviewed the record, including the appendix submitted by Appellee, we conclude the BAP's jurisdictional ruling is correct. *Emann v. Latture (In re Latture)*, 605 F.3d 830, 832 (10th Cir. 2010) (“[T]he failure to file a timely notice of appeal from a bankruptcy court's order constitutes a jurisdictional defect.”). Accordingly, the dismissal of Fuller's appeal for lack of jurisdiction is **affirmed**.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge