

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13904
Non-Argument Calendar

SCOTT M. BALOTIN,
ELLEN M. BALOTIN,

Petitioners-Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Petition for Review of a Decision of the
U.S. Tax Court
Agency No. 7721-19

Before JORDAN, KIDD, and MARCUS, Circuit Judges.

PER CURIAM:

Scott and Ellen Balotin (collectively, the “Balotins”), proceeding pro se, appeal from the U.S. Tax Court’s denial of their

“Motion to Vacate Decision Under Rule 162 for Fraud on the Court.” On appeal, the Balotins: (1) argue that the Tax Court erred by only asking whether fraud on the court could provide relief for their late motion to vacate, since relief was warranted under Federal Rule of Civil Procedure 60; (2) argue that equitable tolling should have applied to their motion; and (3) raise various motions concerning the record and their reply brief. After thorough review, we affirm in full and address their motions in turn.

I.

We review the Tax Court’s denial of a motion to vacate for abuse of discretion. *Romano-Murphy v. Comm’r of Internal Revenue*, 816 F.3d 707, 714 (11th Cir. 2016). We review the Tax Court’s denial of leave to file a motion to vacate for abuse of discretion. *Davenport Recycling Assocs. v. Comm’r*, 220 F.3d 1255, 1258 (11th Cir. 2000). “We will reverse for abuse of discretion only if we have a definite and firm conviction that the Tax Court committed a clear error of judgment in the conclusion it reached.” *Id.* We review “the Tax Court’s legal conclusions and interpretations of the tax code de novo and its findings of facts for clear error.” *Long v. Comm’r of IRS*, 772 F.3d 670, 675 (11th Cir. 2014) (per curiam).

The legal question of whether equitable tolling can apply to a situation receives de novo review. *NuVasive, Inc. v. Absolute Med., LLC*, 71 F.4th 861, 872 (11th Cir. 2023). However, we review for abuse of discretion “the application of that law to the particular facts.” *Id.* (citation modified).

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We may affirm the Tax Court’s decision “on any ground that finds support in the record.” *Long*, 772 F.3d at 675. We cannot consider issues presented by a taxpayer on appeal “to the extent that they differ from those raised in the Tax Court.” *Pearson v. Comm’r of Internal Revenue*, 890 F.2d 353, 354 (11th Cir. 1989) (per curiam). “Plainly, the court of appeals lacks jurisdiction to decide an issue that was not the subject of the Tax Court proceeding or to grant relief that is beyond the powers of the Tax Court itself.” *Comm’r of Internal Revenue v. McCoy*, 484 U.S. 3, 6 (1987) (per curiam).

We liberally construe briefs filed by pro se litigants, but “issues not briefed on appeal by a pro se litigant are deemed abandoned.” *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam) (citation modified). Additionally, we do not address arguments raised for the first time in a pro se litigant’s reply brief. *Id.*

II.

The events of this case date back to at least February 2019, when the Internal Revenue Service (“IRS”) issued a notice of deficiency to the Balotins for tax year 2015. In the notice, the IRS alleged that the Balotins owed \$148,906.00 in taxes and a \$29,781.20 penalty under the Internal Revenue Code due to errors in their claimed alternative minimum tax, itemized deductions, unreimbursed employee expenses, and standard deduction. Separately, in a federal criminal case brought against Scott Balotin and seven others, the jury found Scott guilty in October 2021 of one count of conspiring to commit health care fraud and one count of engaging

in an illegal money transaction. In November 2021, in a proposed stipulated decision with the Tax Court, the Balotins and the Commissioner stipulated that the Balotins had an income tax deficiency of \$148,906.00 for the 2015 tax year, but no penalty under the Internal Revenue Code.

Then, in October 2023, the government joined Scott Balotin in a joint consent motion for new trial in his criminal case, based on evidence the government failed to previously disclose. The district court granted the motion, setting aside the jury's guilty verdicts, and in October 2024, the court granted the government's motion to dismiss Scott Balotin's indictment. In June 2025, the Balotins returned to the Tax Court, filing a pro se "Motion to Vacate Decision Under Rule 162 for Fraud on the Court," asking the court to vacate the 2021 stipulated decision due to "fraud on the court" via governmental misconduct, which could lead a decision to "be vacated 'at any time.'" They added that from November 2019 to October 2023, the Department of Justice had "recorded an illegal *lis pendens* on [their] properties" in the criminal case, which stopped them from selling certain properties "to pay the 2015 tax debt or retain qualified tax counsel," and they made various allegations about the attorney who represented them in Tax Court.

Although the motion was docketed as seeking leave to file an out-of-time motion to vacate, the Tax Court construed it as a motion to vacate and denied the motion. Citing Tax Court Rule 162, which requires a motion to vacate to be filed within 30 days, unless the Tax Court shall otherwise permit, the Tax Court noted

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that the Balotins' motion was filed nearly four years after the 2021 stipulated decision was entered. As for the argument that the Balotins "signed the Proposed Stipulated Decision when under extreme financial duress caused by government-imposed restrictions and a wrongful conviction" and that they had "new evidence that proves ineffective assistance of counsel," the Tax Court concluded that the Balotins had not shown fraud on the court and were not entitled to vacate the stipulated decision. Relying on *Davenport v. Commissioner*, 220 F.3d 1255, 1259 (11th Cir. 2000), the Tax Court reasoned that "[f]raud upon the Court is narrowly construed and has only been found where fraud vitiates the Court's ability to reach an impartial disposition of the case," where the Tax Court lacked jurisdiction over "either the subject matter or the party," and "where the decision was based on mutual mistake." Thus, the court held, "[d]uress, new evidence, and ineffective assistance of counsel do not fall into these narrow exceptions."

This timely appeal follows.

III.

First, we are unpersuaded by the Balotins' claim that the Tax Court should have granted them relief under Rule 60. The Internal Revenue Code provides that a Tax Court decision becomes final 90 days after entry if no party files a notice of appeal. 26 U.S.C. §§ 7481(a), 7483. Tax Court Rule 162 provides that a motion to vacate "shall be filed within 30 days after the decision has been entered, unless the Court shall otherwise permit." Additionally, "as

a general rule, the Tax Court lacks jurisdiction to vacate a decision once it becomes final.” *Davenport*, 220 F.3d at 1259.

We’ve recognized “narrow exceptions” to this finality rule “when: (1) the decision is shown to be void or a legal nullity for lack of jurisdiction”; “(2) there has been fraud on the court; or (3) the decision was based on mutual mistake.” *Id.*; see also *Berkun v. Comm’r of Internal Revenue*, 890 F.3d 1260, 1264 (11th Cir. 2018). “In the context of a motion to vacate a final Tax Court decision, fraud upon the court is narrowly construed,” and it will only be found where an “unconscionable plan or scheme which is designed to improperly influence the court in its decision[] prevent[s] the opposing party from fully and fairly presenting his case.” *Davenport*, 220 F.3d at 1262 (citation modified). “It has been found only in those instances where the fraud vitiates the court’s ability to reach an impartial disposition of the case before it.” *Id.*

In *Davenport*, we cited numerous persuasive cases to explain when a finding of fraud on the court is not warranted, before ultimately finding that none of the narrow exceptions to the finality rule applied, including the fraud on the court exception. *Id.* We cited to *Heim v. Comm’r*, 872 F.2d 245, 246 (8th Cir. 1989), in which no fraud upon the court was “found where taxpayers claimed that their attorney entered into misleading and inadequate stipulations.” *Id.* Further, in *Anderson v. Comm’r*, 693 F.2d 844, 846 (9th Cir. 1979), no fraud upon the court was found “where taxpayer’s tax advisors misrepresented themselves as lawyers admitted to practice before the Tax Court.” *Id.* Finally, in *Senate Realty Corp. v.*

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Comm’r, 511 F.2d 929, 931 (2d Cir. 1975), no fraud upon the court was found even though the “attorney representing a corporate taxpayer was unauthorized to settle [an] IRS claim against the corporation,” and the attorney filed a “settlement stipulation in Tax Court on which judgment was entered.” *Id.*

In *Berkun*, we said that, where a taxpayer failed to raise a certain legal argument based on legislative history “in his response to the motion to dismiss, the [T]ax [C]ourt was within its discretion to deny [the taxpayers’] motion to vacate, and we ha[d] no occasion to address the argument.” *Berkun*, 890 F.3d at 1264–65. Further, one case we cited held that motions to vacate or amend a judgment “‘should not be used to raise arguments which could, and should, have been made before the judgment was issued.’” *Id.* at 1265 (quoting *O’Neal v. Kennamer*, 958 F.2d 1044, 1047 (11th Cir. 1992)).

While Tax Court Rule 162 governs motions to vacate or reverse a decision of the Tax Court, it does not specify under what circumstances the Tax Court should grant this kind of motion. Thus, the Tax Court may look to Rule 60 of the Federal Rules of Civil Procedure as an analogous situation for guidance on whether to grant motions to vacate. *See* Tax Ct. R. 1(b) (noting that when the Tax Court rules are silent on a procedure then the Tax Court “may prescribe the procedure, giving particular weight to the Federal Rules of Civil Procedure to the extent that they are suitably adaptable to govern the matter at hand”); *see also* Fed. R. Civ. P. 60.

Under Rule 60(b), a district court may modify a judgment for any of the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b)(1)–(6). However, motions made in reliance on Rule 60(b)(1)–(3) cannot be made more than a year after the final judgment. *Id.* 60(c)(1). As for motions brought under Rule 60(b)(4)–(6), the motion “must be made within a reasonable time.” *Id.* Additionally, Rule 60 “does not limit a court’s power to” “set aside a judgment for fraud on the court.” *Id.* 60(d)(3); *see also Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244–45 (1944), *abrogated on other grounds by Standard Oil Co. v. United States*, 429 U.S. 17, 18–19 (1976) (per curiam) (noting that final judgments can be set aside under equity due to an “after-discovered fraud” regardless of when the judgment was entered).

A movant can only obtain relief under Rule 60(b)(6)’s “any other reason that justifies relief” standard when relief under Rules 60(b)(1)–(5) is inapplicable. *Kemp v. United States*, 596 U.S. 528, 533, 539 (2022) (holding that a judicial error of law was a “mistake” under Rule 60(b)(1) subjected to the one-year limitations period). Further, to obtain relief under Rule 60(b)(6), there must be “extraordinary circumstances” that justify the reopening of the case. *Id.* at 533 (citation modified). Courts have authority to grant relief under Rule 60(b)(6) “whenever such action is appropriate to accomplish justice.” *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863–64 (1988) (citation modified).

In *Liljeberg*, the Supreme Court held that there were “extraordinary circumstances” warranting relief under Rule 60(b)(6) when the deciding judge committed a violation of 28 U.S.C. § 455(a) by failing to recuse himself when he should have known that he had a fiduciary interest in the outcome of the case. *Id.* at 850–51, 863–64, 863 n.11, 867–70. The Supreme Court noted that to fall into the “other reason” category of Rule 60(b)(6), there must be “extraordinary circumstances” that did not fall into clauses (1)–(5), and that the respondent presented “extraordinary circumstances,” since it was not due to a lack of diligence or neglect that the parties lacked knowledge of the judge’s conflict because the judge failed to disclose the interest, which was not public record at the time of the litigation. *Id.* at 863–64, 863 n.11.

Here, the Tax Court did not abuse its discretion by denying the Balotins’ “Motion to Vacate Decision Under Rule 162 for Fraud

on the Court.” We find no merit to their claim that the Tax Court erred when it failed to apply the Fed. R. Civ. P. 60 standard to their motion to vacate – and instead applied only *Davenport*’s “narrow exceptions” to the finality rule – even though it cited Rule 60(b) at one point. Under Tax Court Rule 1(b), if the Tax Court rules do not specify the procedure, the Tax Court “may prescribe the procedure, giving particular weight to the Federal Rules of Civil Procedure to the extent that they are suitably adaptable to govern the matter at hand.” Tax Ct. R. 1(b) & 162. Thus, Rule 1(b) provides the Tax Court with discretion on how to treat a motion, and the Balotins have not pointed to any precedent requiring Rule 60 to be applied to all Tax Court Rule 162 motions to vacate.

But, even if the Tax Court had applied Rule 60 to their Rule 162 motion to vacate, they would not have been entitled to relief. First, any new evidence, claims of fraud or misconduct by the government, or claims of mistake by their attorney all fall into the categories in Rule 60(b)(1)–(3). Fed. R. Civ. P. 60(1)–(3) (listing mistake, new evidence, and fraud). Under Rule 60(c)(1), motions made under Rule 60(b)(1)–(3) must be filed within a year after the final judgment, so the Balotins’ 2025 motion, which far exceeded one year after the November 2021 stipulated decision, would have been untimely. Further, even though the Balotins could not have raised certain arguments at the time of the Tax Court case about later-occurring governmental misconduct or fraud in the criminal case or enforcement actions, Rule 60(b)(6) relief is not warranted since their alleged new evidence of government misconduct or fraud squarely falls into Rule 60(b)(2) and (3). Thus, the Balotins’

claim is unlike the recusal issue in *Liljeberg*, which the Supreme Court implicitly found did not fall into any Rule 60(b)(1)–(5) categories. 486 U.S. at 850–51, 863–64, 863 n.11.

Moreover, to the extent the Balotins say they had meritorious defenses to the original finding of deficiency -- including that Ellen Balotin was an “innocent spouse” under 26 U.S.C. § 6015(b), and that Scott Balotin’s criminal legal fees should have been deductible under *Commissioner v. Tellier*, 383 U.S. 687, 687–95 (1966) -- the existence of potentially meritorious defenses *at the time of* the stipulated decision are not “extraordinary circumstances” justifying relief under Rule 60(b)(6). See *Kemp*, 596 U.S. at 533. And because the Balotins did not bring these defenses until four years later in their motion to vacate, “the [T]ax [C]ourt was within its discretion to deny [the taxpayers’] motion to vacate,” leaving us “no occasion to address the argument[s]” on the merits. *Berkun*, 890 F.3d at 1264–65. It’s also worth noting that the changing circumstances of the dismissed indictment did not change the applicability of these defenses to the stipulated decision, bolstering the finding that they were not “extraordinary circumstances.”

As for whether the Tax Court abused its discretion when it found there was no fraud on the court, the Balotins forfeited this argument by failing to raise it in their initial brief. *Timson*, 518 F.3d at 874.¹ But even if we were to consider it, the Balotins have not

¹ For this same reason, we will not address the numerous other arguments the Balotins’ made for the first time in their reply brief, including errors concerning how the Tax Court construed their motion as a motion to vacate; the Tax

shown how the alleged governmental wrongdoings in Scott’s criminal case, the *lis pendens*, and a later tax lien and passport certification case “vitiate[d] the court’s ability to reach an impartial disposition of the case before it” when the parties entered the stipulated decision. *Davenport*, 220 F.3d at 1262. Notably, they failed to point to any actions taken by the Commissioner that amounted to fraud against the Tax Court itself or any indication that the Commissioner sought to improperly influence the Tax Court’s decision. *Id.* (relying on cases in which no fraud upon the court was found when “taxpayers claimed that their attorney entered into misleading and inadequate stipulations” and even when the attorney was not authorized to enter the stipulation). Thus, the Tax Court did not abuse its discretion by failing to grant the Balotins’ motion to vacate.

IV.

Nor are we persuaded by the Balotins’ argument that the Tax Court should have applied equitable tolling in their case. Notably, the Balotins did not expressly ask the Tax Court for equitable tolling, so we have no jurisdiction to address whether equitable tolling could apply to the Balotins’ Tax Court Rule 162 Motion to Vacate. *McCoy*, 484 U.S. at 6; *Pearson*, 890 F.2d at 355. While they mention, on the final page of their reply brief in Tax Court, “[t]he

Court’s failure to address their second supplement and reply; a revenue agent’s examination workpapers; how the *lis pendens* removed their ability to have their chosen representation; and their attorney’s alleged wrongdoings. *Timson*, 518 F.3d at 874.

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extraordinary and usual circumstances of this case” and “extraordinary relief,” they never used the words equitable tolling in their motion nor did they make a diligence argument. Nor is there any indication they diligently pursued their right to vacate the stipulated decision. Scott’s indictment was dismissed in October 2024, and the Balotins did not file the motion until June 2025. Accordingly, we affirm as to this issue as well.

V.

Finally, we turn to the various motions the Balotins have filed in this Court. For starters, we deny their first and second motions to supplement the record. As we’ve noted, we will not consider evidence that was not presented to the Tax Court. *Habeeb v. Comm’r of Internal Revenue*, 559 F.2d 435, 437 (5th Cir. 1977).² Further, “[w]e rarely enlarge the record on appeal to include material not before the [trial] court which has labored without the benefit of the proffered material.” *CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1330 (11th Cir. 2000). However, we “have the inherent equitable power to allow supplementation of the appellate record if it is in the interests of justice.” *Id.* This matter is left to our discretion and decided on a case-by-case basis. *Id.* In deciding whether to grant a motion to supplement, we consider “whether acceptance of the proffered material into the record would establish beyond any doubt the proper resolution of the pending issues.”

² In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all Fifth Circuit decisions issued before October 1, 1981.

Id. Additionally, when the new material “would be dispositive of pending issues in the case, we are often more willing to allow supplementation of the record.” *Ouachita Watch League v. Jacobs*, 463 F.3d 1163, 1170–71 (11th Cir. 2006) (citation modified).

Under the Federal Rules of Appellate Procedure, the content of the record on appeal is governed by Rule 10, “[e]xcept as otherwise provided under Tax Court rules for the transcript of proceedings.” Fed. R. App. P. 13(a)(4). Under Rule 10, the record on appeal consists of: “(1) the original papers and exhibits filed in the district court; (2) the transcript of proceedings, if any; and (3) a certified copy of the docket entries prepared by the district clerk.” *Id.* 10(a).

“If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected” with the certification of a supplemental record by the parties’ stipulation, by the district court, or by the court of appeals. *Id.* 10(e)(2). Rule 10(e) applies when the document was relied upon by the parties in the proceedings below but “for some unexplained reason it was not filed below.” *Ross v. Kemp*, 785 F.2d 1467, 1471–72 (11th Cir. 1986) (noting in the circumstances of the case “that the parties could reasonably have believed [a document] had become a part of the record”). However, Rule 10(e) may not be used to supplement the record with material that was not presented to the trial court in any form and was not relied on by the parties at an earlier point in the proceedings. *Id.* at 1473–74.

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Here, we **DENY** the Balotins' first and second motions to supplement the record, because the documents were not before the Tax Court, and, as we've already explained, they would not establish beyond any doubt the proper resolution of the pending issues. *CSX Transp., Inc.*, 225 F.3d at 1330; *Davenport*, 220 F.3d at 1262; *Habeeb*, 559 F.2d at 437.

Next, the Balotins have asked this Court to take judicial notice of certain documents. The Federal Rules of Evidence provide that a "court may judicially notice a fact that is not subject to reasonable dispute" if the fact: "(1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). "The court may take judicial notice at any stage of the proceeding." *Id.* 201(d). The court may on its own take judicial notice or it "must take judicial notice if a party requests it and the court is supplied with the necessary information." *Id.* 201(c)(1)–(2). We only take judicial notice if the fact to be noticed is relevant to the issues on appeal. *Dippin' Dots, Inc. v. Frosty Bites Distrib., LLC*, 369 F.3d 1197, 1204 (11th Cir. 2004) (explaining that facts subject to judicial notice must be "relevant to a determination of the claims presented").

"In order for a fact to be judicially noticed under Rule 201(b), indisputability is a prerequisite." *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994). "[A] court may take judicial notice of a document filed in another court, not for the truth of the matters as-

serted . . . but rather, to establish the fact of such litigation and related filings.” *Id.* (citation modified). Further, the Federal Rules of Appellate Procedure provide that “[a]n application for an order or other relief[should be] made by motion unless these rules prescribe another form.” Fed. R. App. P. 27(a)(1).

Here, we **DENY** the Balotins’ motion for judicial notice made within their initial brief because they did not properly file the request as a separate motion. *Id.* We **DENY IN PART AS UNNECESSARY** the Balotins’ motion for judicial notice contained within their motion for reconsideration, because it concerns documents already within the Tax Court’s record. As for the Balotins’ request for judicial notice of the docket for Scott Balotin’s criminal proceeding, we **GRANT IN PART** that request to acknowledge the fact that the litigation occurred, but we will not accept the truth of the matters asserted within the filings. *Jones*, 29 F.3d at 1553. We also **DENY IN PART** the Balotins’ remaining requests that we take judicial notice of another Qui Tam False Claims Act case and of the National Registry of Exonerations, because those records are not relevant to the resolution of the issues on appeal. *Dippin’ Dots, Inc.*, 369 F.3d at 1204.

Finally, we deny their requests concerning their reply to a motion to supplement the record and their request to file an expanded reply brief in this appeal. A party must file a reply to the response to their motion within “7 days after service of the response” and the “reply must not present matters that do not relate to the response.” Fed. R. App. P. 27(a)(4). Three days are added to

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the period for response unless delivery occurs on the date of service or electronically. *Id.* 26(c). For good cause, the court may extend the time prescribed by these rules. *Id.* 26(b). Generally, we have held that “[a] motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.” *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) (citation modified).

Moreover, a reply brief cannot exceed 15 pages or exceed more than 6,500 words. Fed. R. App. P. 32(a)(7)(B). Under our rules, motions for leave to file briefs that do not comply with these length requirements “must be filed at least seven days in advance of the due date of the brief.” 11th Cir. R. 32-4. We disfavor such motions and will only grant them “for extraordinary and compelling reasons.” *Id.*

Here, we **DENY** the Balotins’ motion for reconsideration of the clerk’s denial of their untimely reply to the Commissioner’s response to their first motion to supplement, because the Balotins failed to show good cause. Fed. R. App. P. 26(b). We also **DENY AS MOOT** the Balotins’ motion for excess words since their reply brief did not exceed the word limit. Fed. R. App. P. 32(a)(7)(B).

In all other respects, we **AFFIRM**.