

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 24 2023

FOR THE NINTH CIRCUIT

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

SARAH NATHREEN NAKANWAGI,

No. 22-16351

Plaintiff-Appellant,

D.C. No. 3:21-cv-08015-MHB

v.

MEMORANDUM*

CITY OF FLAGSTAFF,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Arizona
Michelle H. Burns, Magistrate Judge, Presiding**

Submitted July 18, 2023***

Before: SCHROEDER, RAWLINSON, and BADE, Circuit Judges.

Sarah Nathreen Nakanwagi appeals pro se from the district court's order denying her Federal Rule of Civil Procedure 60(b) motion in her action alleging federal employment law claims. We have jurisdiction under 28 U.S.C. § 1291.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We review for an abuse of discretion. *De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000). We affirm.

The district court did not abuse its discretion by construing Nakanwagi's motion as one for relief under Rule 60(b)(3) and denying it because Nakanwagi failed to demonstrate any basis for relief. *See Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) (to prevail under Rule 60(b)(3), the "moving party must prove by clear and convincing evidence" that judgment was obtained through fraud, misrepresentation, or other misconduct that was not "discoverable by due diligence before or during the proceedings" (citation and internal quotation marks omitted)).

Even if Nakanwagi's motion were construed as being brought under Rule 60(b)(1), (5), or (6), Nakanwagi did not demonstrate any basis for relief. *See Henson v. Fidelity Nat'l Fin., Inc.*, 943 F.3d 434, 443-44 (9th Cir. 2019) ("A movant seeking relief under Rule 60(b)(6) must show extraordinary circumstances justifying the reopening of a final judgment." (citation and internal quotation marks omitted)); *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1100-01 (9th Cir. 2006) (discussing grounds to vacate a judgment under Rule 60(b)(1)); *SEC v. Coldicutt*, 258 F.3d 939, 941-42 (9th Cir. 2001) (discussing conditions under which a court may modify an order under Rule 60(b)(5)).

AFFIRMED.

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Sarah Nathreen Nakanwagi,
Plaintiff,
v.
City of Flagstaff,
Defendant.

NO. CV-21-08015-PCT-MHB
ORDER

The Court having reviewed the parties Stipulation for Dismissal with Prejudice (Doc. 40), and good cause shown,

IT IS ORDERED granting the Stipulation (Doc. 40),

IT IS FURTHER ORDERED dismissing this matter as to all claims and all defendants, with prejudice, with each side to bear its own attorneys' fees and costs.

Dated this 28th day of September, 2021.



Honorable Michelle H. Burns
United States Magistrate Judge