

MAY 29 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EMILIA DUARTE,

Plaintiff – Appellee,

v.

HECTOR BARDALES,

Defendant – Appellant.

No. 08-56651

D.C. No. CV-06-00158-TJW

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted March 2, 2009**
Pasadena, California

Before: BRIGHT***, PREGERSON, and BEA, Circuit Judges.

Hector Bardales, Defendant-Appellant, a resident of California, appeals an order of the district court dismissing this action without granting attorney fees to

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

*** The Honorable Myron H. Bright, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

Bardales. Emilia Duarte, Plaintiff-Appellee, a resident of Mexico, moved for dismissal of this action¹ under provisions of Federal Rule of Procedure 41. On review, we determine that the order of the district court dismissing the action without allowing attorney fees did not amount to an abuse of discretion.²

Accordingly, we **AFFIRM**.³

¹ See prior opinion, *Duarte v. Bardales*, 526 F.3d 563 (9th Cir. 2008).

² Bardales moves that we take judicial notice of an order from the California Court of Appeals staying proceedings pending resolution of the litigation in federal court and a statement from the pro bono attorney for Emilia Duarte submitted to the California Court of Appeals. We grant the motion but note that the exhibits attached to the motion are irrelevant on the present appeal.

³ Appellant Bardales requests that the opinion of this court be published. That request is denied.