

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 22 2010

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

MARIA METKO,

Plaintiff - Appellant,

v.

SOCIAL SECURITY
ADMINISTRATION; et al.,

Defendants - Appellees.

No. 08-17285

D.C. No. 3:07-cv-00226-BES-
RAM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Brian E. Sandoval, District Judge, Presiding

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Maria Metko appeals pro se from the district court's judgment dismissing her action for failure to exhaust administrative remedies under the Social Security

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

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

Act (“SSA”). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Kildare v. Saenz*, 325 F.3d 1078, 1082 (9th Cir. 2003), and we affirm.

The district court properly concluded that it lacked subject matter jurisdiction because Metko failed to exhaust her administrative remedies before filing this action. *See id.* at 1082-86 (affirming dismissal for lack of subject matter jurisdiction where plaintiffs failed to exhaust administrative remedies under the SSA). We construe the dismissal as without prejudice. *See O’Guinn v. Lovelock Corr. Ctr.*, 502 F.3d 1056, 1063 (9th Cir. 2007) (concluding that dismissal without prejudice is proper where plaintiff failed to exhaust administrative remedies).

Metko’s remaining contentions are unavailing.

AFFIRMED.