

JUN 22 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY S. THUILLARD,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 08-36013

D.C. No. 2:04-cv-00368-FVS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Mary S. Thuillard appeals pro se from the district court's summary judgment in her action alleging malicious prosecution under the Federal Tort Claims Act

* 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).

(“FTCA”). We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Lassiter v. City of Bremerton*, 556 F.3d 1049, 1053 (9th Cir. 2009), and we affirm.

The district court properly granted summary judgment on the malicious prosecution claim because Thuillard failed to raise a triable issue as to whether the prosecution was instituted or continued without probable cause or with malice. *See Conrad v. United States*, 447 F.3d 760, 767 (9th Cir. 2006) (“In assessing the United States’ liability under the FTCA, we are required to apply the law of the state in which the alleged tort occurred.”); *Lassiter*, 556 F.3d at 1054 (listing elements of a malicious prosecution claim under Washington law).

We do not consider the merits of Thuillard’s motions to compel discovery because the district court denied the motions without prejudice for failure to comply with procedural requirements, *see* Fed. R. Civ. P. 37(a)(1); E.D. Wash. L. R. 7.1(b), 37.1(b), and Thuillard did not renew the motions.

Thuillard’s remaining contentions are unpersuasive.

AFFIRMED.