

SEP 29 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BRIAN K. JOHNSON,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>ELDON VAIL, Secretary; et al.,</p> <p>Defendants - Appellees.</p>

No. 09-35498

D.C. No. 3:08-cv-05654-FDB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Submitted September 22, 2010**

Before: WALLACE, HAWKINS and THOMAS, Circuit Judges.

The district court did not abuse its discretion by dismissing Brian K. Johnson’s (“Johnson”) action for failure to file an opposition to defendants’ motion to dismiss. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (per curiam) (listing factors to be considered before dismissing an action for failure to comply

* 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)*.

with local rules, and explaining that we review the record independently when the district court does not expressly consider these factors); *see also* W.D. Wash. R. 7(b)(2) (“If a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit.”).

Moreover, Johnson has waived any challenge to the district court’s dismissal because he has not addressed it on appeal. *See Cook v. Schriro*, 538 F.3d 1000, 1014 n.5 (9th Cir. 2008) (explaining that issues not raised on appeal are deemed abandoned).

Johnson’s remaining contentions are unpersuasive.

AFFIRMED.