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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ALFRED T. SAPSE,</p> <p style="padding-left: 40px;">Plaintiff - Appellant,</p> <p style="padding-left: 40px;">and</p> <p>RENEE SAPSE,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p style="padding-left: 40px;">v.</p> <p>JACK FERM,</p> <p style="padding-left: 40px;">Defendant - Appellee.</p>

No. 10-15850

D.C. No. 2:09-cv-00779-KJD-PAL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted October 25, 2011**

Before: TROTT, GOULD, and RAWLINSON, Circuit Judges.

Alfred T. Sapse appeals pro se from the district court's judgment dismissing

* 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).

his action to set aside a prior judgment against him. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the denial of leave to amend. *Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009). We affirm.

The district court did not abuse its discretion by denying leave to amend the complaint to plead fraud on the court because amendment would have been futile. *See id.* at 992 (district court did not abuse its discretion by denying leave to amend where amendment would be futile); *see also Appling v. State Farm Mut. Auto. Ins. Co.*, 340 F.3d 769, 780 (9th Cir. 2003) (affirming dismissal of independent action to set aside a judgment for fraud on the court because the alleged acts did not constitute a “grave miscarriage of justice”).

Sapse’s remaining contentions are unpersuasive.

Appellee’s motion to strike the reply brief is denied.

AFFIRMED.