

SEP 25 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JULIE SCHMIDT; LEON E. GERHARD,</p> <p style="text-align: center;">Plaintiffs - Appellants,</p> <p style="text-align: center;">v.</p> <p>TACOMA POLICE DEPARTMENT; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 11-35010

D.C. No. 3:09-cv-05135-RBL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Julie Schmidt and Leon E. Gerhard appeal pro se from the district court’s summary judgment in their action alleging constitutional, disability discrimination, and defamation claims arising from their eviction from their residence due to

* 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).

unsafe conditions. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 922 (9th Cir. 2004). We affirm in part and dismiss in part.

The district court properly granted summary judgment for the reasons stated in its order filed on December 6, 2010.

The district court did not abuse its discretion by denying plaintiffs' motion to appoint counsel because plaintiffs failed to show exceptional circumstances. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and requirement of "exceptional circumstances" for appointment of counsel).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

We lack jurisdiction to review the district court's order striking the default entered against defendant Galvan and dismissing plaintiffs' claims against him because plaintiffs failed to file an appeal or amended notice of appeal from that post-judgment order. *See Whitaker v. Garcetti*, 486 F.3d 572, 585 (9th Cir. 2007) (appellant generally must file a notice of appeal or amend a previously filed notice of appeal to secure review of a post-judgment order). Accordingly, we dismiss that

portion of the appeal.

Plaintiffs' request that defendant Tacoma Power cease "harassing" them until this case is decided, received on August 13, 2012, is denied as moot.

AFFIRMED in part; DISMISSED in part.