

AUG 05 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ERIC T. HICKS,

Plaintiff - Appellant,

v.

GARFIELD BEACH CVS LLC; and
THRIFTY PAYLESS, INC., Str 9804,

Defendants - Appellees.

No. 11-55507

D.C. No. 5:10-cv-00793-VAP-OP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted July 24, 2013**

Before: ALARCÓN, CLIFTON, and CALLAHAN, Circuit Judges.

Eric T. Hicks appeals pro se from the district court's order denying his motion for a new trial. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 728 (9th Cir.

* 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).

2007), and we affirm.

The district court did not abuse its discretion in denying Hicks's motion for a new trial because Hicks failed to establish any basis for such relief. *See id.* at 729 (setting forth grounds for a new trial under Federal Rule of Civil Procedure 59(a)); *see also* Fed. R. Civ. P. 60(b) (setting forth grounds for relief from a final judgment).

To the extent that Hicks challenges the district court's judgment dismissing his underlying action, we do not consider his contentions because Hicks did not file a timely notice of appeal from that judgment. *See* Fed. R. Civ. P. 59(e) (tolling motion must be filed within 28 days from entry of judgment); *Fiester v. Turner*, 783 F.2d 1474, 1475 (9th Cir. 1986) (order) (untimely motion does not suspend time to appeal).

Hicks's motion for discovery and sanctions, filed on November 7, 2011, is denied.

AFFIRMED.