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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LINDSEY E. STEWART; et al.,</p> <p>Plaintiffs - Appellants,</p> <p>v.</p> <p>STATE OF CALIFORNIA DEPARTMENT OF EDUCATION; et al.,</p> <p>Defendants - Appellees.</p>

No. 12-57199

D.C. No. 3:07-cv-00971-MMA-WVG

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Michael M. Anello, District Judge, Presiding

Submitted June 25, 2014**

Before: HAWKINS, TALLMAN, and NGUYEN, Circuit Judges.

Lindsey E. Stewart, Jason P. Stewart, and Caitlin N. Stewart appeal pro se from the district court’s order granting defendants’ request to waive further proceedings in connection with their motion for a vexatious litigant determination,

* 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).

treating the motion as withdrawn, and closing the case. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *M.M. v. Lafayette Sch. Dist.*, 681 F.3d 1082, 1086 (9th Cir. 2012). We affirm.

The district court did not abuse its discretion because it reasonably treated defendants' request as a motion to withdraw, and its decision resulted in no harm or prejudice to Lindsey E. Stewart, given that the order declaring her a vexatious litigant had been vacated. *See Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1100 (9th Cir. 2006) (under the abuse of discretion standard, a district court can be reversed only if it does not apply the correct law, rests its decision on a clearly erroneous finding of material fact, or applies the correct legal standard in a manner that results in an abuse of discretion); *see also Stewart v. Cal. Dep't of Educ.*, No. 10-55282, 493 F. App'x 889 (9th Cir. Sep. 20, 2012).

To the extent that appellants challenge the rejection of their brief opposing defendant's request, the district court did not abuse its discretion because, as it explained, the case was closed, and the vexatious litigant order and injunction had been vacated. *See id.*

We reject appellants' contentions that the district court was required to conduct an evidentiary hearing, and that the district court judge was biased against them.

Defendants' request for judicial notice, filed on May 16, 2013, is granted.

Appellants' request for judicial notice, filed on November 26, 2013, is denied.

AFFIRMED.