

SEP 08 2015

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHRISTIAN JOUBERT,

Plaintiff - Appellant,

v.

ANNE E. DELAMATER,

Defendant - Appellee.

No. 13-35559

D.C. No. 1:12-cv-00209-PA

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Owen M. Panner, District Judge, Presiding

Submitted August 25, 2015\*\*

Before: McKEOWN, CLIFTON, and HURWITZ, Circuit Judges.

Christian Joubert appeals pro se from the district court's judgment dismissing his diversity action with prejudice for failure to prosecute. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Ash v. Cvetkov*, 739 F.2d 493, 495 (9th Cir. 1984), and we reverse and remand.

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\* 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).

The district court dismissed Joubert's action with prejudice for failure to prosecute after Joubert did not appear at a status conference. The district court failed to consider the adequacy of less drastic sanctions, such as dismissal without prejudice. *See Oliva v. Sullivan*, 958 F.2d 272, 274 (9th Cir. 1992) (“A district court abuses its discretion if it imposes a sanction of dismissal without first considering the impact of the sanction and the adequacy of less drastic sanctions.” (citation and internal quotation marks omitted)); *see also Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (“[D]ismissal is a harsh penalty and, therefore, it should only be imposed in extreme circumstances.”). Accordingly, we reverse and remand for further proceedings.

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

All pending motions and requests are denied. Joubert's request for attorney's fees, set forth in the opening brief, is denied.

**REVERSED and REMANDED.**