

MAR 23 2016

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARMEN SUAREZ-SMITH,

Plaintiff - Appellant,

v.

BAC HOME LOANS SERVICING, LP; et  
al.,

Defendants - Appellees.

No. 13-17654

D.C. No. 2:11-cv-00201-GMN-  
PAL

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Gloria M. Navarro, Chief Judge, Presiding

Submitted March 15, 2016\*\*

Before: GOODWIN, LEAVY, and CHRISTEN, Circuit Judges.

Carmen Suarez-Smith appeals pro se from the district court's judgment dismissing her diversity action alleging state law foreclosure claims. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a

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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).

dismissal for failure to prosecute. *Al-Torki v. Kaempfen*, 78 F.3d 1381, 1384 (9th Cir. 1996). We affirm.

Suarez-Smith fails to challenge the district court's dismissal of her action for failure to prosecute, and has therefore waived any such challenge. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (“[O]n appeal, arguments not raised by a party in its opening brief are deemed waived.”). Because Suarez-Smith's action was dismissed for failure to prosecute, we do not consider her challenges to the district court's interlocutory order dismissing her complaint with leave to amend. *See Al-Torki*, 78 F.3d at 1386 (if the dismissal is for failure to prosecute, interlocutory orders are not appealable regardless of whether the failure to prosecute was purposeful or the result of negligence or mistake).

**AFFIRMED.**