

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 23 2016

FOR THE NINTH CIRCUIT

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

CHERYL M. FEALY,

Plaintiff-Appellant,

v.

WELLS FARGO BANK, NA,

Defendant-Appellee.

No. 14-16972

D.C. No. 2:13-cv-02340-APG-
PAL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, District Judge, Presiding

Submitted November 16, 2016**

Before: LEAVY, BERZON, and MURGUIA, Circuit Judges.

Cheryl M. Fealy appeals pro se from the district court's summary judgment in her action alleging federal and state law claims arising from Wells Fargo's turnover of money from Fealy's bank account to the Internal Revenue Service ("IRS") pursuant to a notice of levy. We have jurisdiction under 28 U.S.C. § 1291.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We review de novo. *Vasquez v. County of Los Angeles*, 349 F.3d 634, 639 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Wells Fargo's compliance with the IRS notice of levy immunized it from suit. *See* 26 U.S.C. § 6332(a), (e); *see also Stead v. United States*, 419 F.3d 944, 947 (9th Cir. 2005) (stating that a third party has only two defenses for not turning over levied funds to the IRS). Contrary to Fealy's contention, the district court did not err in granting summary judgment for Wells Fargo notwithstanding Wells Fargo's failure to file a separate motion for summary judgment. *See* Fed. R. Civ. P. 56(f).

The district court did not abuse its discretion by setting aside the entry of default against Wells Fargo. *See O'Connor v. Nevada*, 27 F.3d 357, 364 (9th Cir. 1994) (setting forth standard of review).

We do not consider arguments that were not presented to the district court. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

AFFIRMED.