

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 21 2017

FOR THE NINTH CIRCUIT

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

MARY MARTINEZ,

No. 15-17452

Plaintiff-Appellant,

D.C. No. 2:14-cv-00056-JAD-
CWH

v.

BANK OF NEW YORK MELLON CORP.,
FKA Bank of New York as Trustee for the
CWMBS, Inc, as Trustee for the CWMBS,
Inc.. CHL Mortgage Pass-through Trust
2006-8; et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the District of Nevada
Jennifer A. Dorsey, District Judge, Presiding

Submitted March 8, 2017**

Before: LEAVY, W. FLETCHER, and OWENS, Circuit Judges.

Mary Martinez appeals pro se from the district court's order awarding attorney's fees in her diversity action related to foreclosure proceedings. We have

* 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).

jurisdiction under 28 U.S.C. § 1291. We affirm.

In her opening brief, Martinez argues that she is “informed and believes” that she never received defendant’s motion for attorney’s fees and therefore never filed an opposition. However, the record reveals that defendants properly served the motion for attorney’s fees pursuant to Fed. R. Civ. P. 5(b), and Martinez has not provided any evidence that the motion for attorney’s fees, unlike other motions and court orders, failed to reach her.

We do not address the merits of the district court’s attorney’s fee order because Martinez has not specifically and distinctly raised and argued the merits of that order in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

We do not consider Martinez’s arguments relating to the dismissal of her underlying claims, or the district court’s failure to grant further leave to amend, because Martinez could have raised these issues in her prior appeal, which was dismissed for failure to prosecute.

AFFIRMED.