

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 26 2017

FOR THE NINTH CIRCUIT

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

GAYLE A. KERN; GAYLE A. KERN,
LTD, DBA Kern and Associates,

Plaintiffs-Appellees,

v.

SHERYL MOULTON,

Defendant-Appellant.

No. 16-15544

D.C. No. 3:11-cv-00296-RCJ-PAL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Submitted May 24, 2017**

Before: THOMAS, Chief Judge, and SILVERMAN and RAWLINSON,
Circuit Judges.

Sheryl Moulton appeals pro se from the district court's order denying her motions for relief from judgment in this diversity action alleging malicious prosecution and other state law claims. We have jurisdiction under 28 U.S.C.

* 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).

§ 1291. We review for an abuse of discretion, *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), and we affirm.

The district court did not abuse its discretion by denying Moulton's motions for relief from judgment filed on February 9, 2016 and February 10, 2016 because Moulton failed to demonstrate any basis for relief. *See id.* at 1263 (setting forth grounds for relief from judgment under Fed. R. Civ. P. 60(b)).

We lack jurisdiction to consider Moulton's contentions regarding the district court's prior orders because Moulton failed to file a timely notice of appeal or timely post-judgment tolling motion after the district court entered judgment on February 10, 2015. *See* Fed. R. App. P. 4(a)(1)(A) (notice of appeal must be filed within 30 days after entry of judgment or order appealed from); *Stephanie-Cardona LLC v. Smith's Food & Drug Ctrs., Inc.*, 476 F.3d 701, 703 (9th Cir. 2007) ("A timely notice of appeal is a non-waivable jurisdictional requirement.").

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).

Moulton's requests for appointment of counsel are denied.

AFFIRMED.