

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 20 2017

FOR THE NINTH CIRCUIT

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

DELANO D. DAVIS,

No. 16-35777

Plaintiff-Appellant,

D.C. No. 3:14-cv-01815-JO

v.

MEMORANDUM*

MULTNOMAH COUNTY; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Oregon
Robert E. Jones, District Judge, Presiding

Submitted November 15, 2017**

Before: CANBY, TROTT, and GRABER, Circuit Judges.

Oregon state prisoner Delano D. Davis appeals pro se from the district court's order denying his post-judgment motion for reconsideration in his 42 U.S.C. § 1983 action alleging deliberate indifference and excessive force claims arising from his detention at Multnomah County Detention Center. 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 review for an abuse of discretion. *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). We affirm.

The district court did not abuse its discretion in denying Davis's motion for reconsideration because Davis failed to establish any basis for such relief. *See id.* at 1262-63 (setting forth grounds for relief under Fed. R. Civ. P. 59(e) and 60(b)).

We lack jurisdiction to consider Davis's contentions regarding the district court's grant of summary judgment because Davis failed to file a timely notice of appeal or a timely post-judgment tolling motion after the district court entered judgment on May 18, 2016. *See* Fed. R. Civ. P. 4(a)(1)(A) (a notice of appeal must be filed within 30 days after the entry of judgment); *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."); *Fiestler v. Turner*, 783 F.2d 1474, 1475 (9th Cir. 1986) (under Rule 4(a)(4), an untimely post-judgment motion does not toll time to appeal from the judgment).

We reject as without merit Davis's contention that the district court abused its discretion in denying Davis's motion for leave to amend his complaint as moot.

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).

AFFIRMED.