

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2017

FOR THE NINTH CIRCUIT

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

PATRICIA BAUERLE,

Plaintiff-Appellant,

v.

PATRICIA BAUERLE; et al.,

Defendants-Appellees.

No. 17-15544

D.C. No. 4:16-cv-00614-RCC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, Chief Judge, Presiding

Submitted November 15, 2017**

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

Patricia Bauerle appeals pro se from the district court's judgment dismissing her action alleging federal claims. We have jurisdiction under 28 U.S.C. § 1291.

We review de novo a sua sponte dismissal for failure to state a claim, *Barrett v.*

Belleque, 544 F.3d 1060, 1061 (9th Cir. 2008), and we affirm.

* 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).

The district court properly dismissed Bauerle’s action as frivolous because Bauerle’s claims lacked any arguable basis in law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (a “frivolous” claim lacks an arguable basis either in law or in fact; the “term ‘frivolous’ . . . embraces not only the inarguable legal conclusion, but also the fanciful factual allegation”); *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988) (court may sua sponte dismiss for failure to state a claim without notice or an opportunity to respond where plaintiff cannot possibly win relief).

The district court did not abuse its discretion in dismissing Bauerle’s third amended complaint without leave to amend because further amendment would be futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

We do not consider allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Bauerle’s motion to file a supplemental reply brief (Docket Entry No. 21) is granted. The Clerk shall file the reply brief submitted at Docket Entry No. 22.

International Business Machines Corporation’s request for attorney’s fees

and costs, set forth in its answering brief, is denied without prejudice to filing a separate motion for attorney's fees and bill of costs.

AFFIRMED.